

ELEVENTH JUDICIAL DISTRICT COURT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

FILED
DISTRICT COURT
SAN JUAN COUNTY,
N.M.
JUN 6 1 33 PM '89

No. CV-87-569-1102

STATE OF NEW MEXICO; TIMOTHY PAYNE,
et al.,
Plaintiffs,

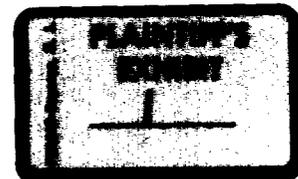
v.

BASIN DISPOSAL INC., et al.,
Defendants.

This matter is before the Court as plaintiffs' Motion To Amend Court's Findings of Fact and plaintiffs' Petition for Attorneys' Fees. The Court, having examined the legal memoranda of the parties, the pertinent legal authority and having heard oral argument of counsel hereby enters the following as its Amended Findings of Fact and Conclusions of Law in accordance with its rulings at the hearing of May 23, 1989.

COURT'S AMENDED FINDINGS OF FACT

1. Defendant Basin Disposal, Inc. ("Basin") is a New Mexico corporation doing business in San Juan County, New Mexico.
2. Defendant Jerry Sandel is a citizen and resident of San Juan County, New Mexico. Mr. Sandel is the president and treasurer of Basin. He is also a director of the corporation and owns twenty-five (25) percent of the capital stock in the corporation.
3. Defendant David Clifford Turner, III is a citizen and resident of San Juan County, New Mexico. Mr. David Turner is the secretary of Basin. He is also a director of the corporation and



owns twenty-five (25) percent of the capital stock in the corporation.

4. Defendant D.C. Turner is a citizen and resident of San Juan County, New Mexico. Mr. Turner is a vice-president and director of the corporation and owns twenty-five (25) percent of the capital stock in the corporation.

5. Mr. David Turner and Mr. D.C. Turner are also the owners and operations of Chief Transport Company, a trucking business which hauls water, formation fluids, drilling muds and other various materials and wastes related to the production of oil and gas.

6. Mr. Sandel also controls other business entities including Triple S Trucking Company, Inc. Triple S Trucking Co. is also in the business of hauling production fluids, muds, and wastes to and from the oil and gas fields.

7. Basin Disposal, Inc. is a disposal facility for waste products from the oil and natural gas industry. The primary operation of Basin is to serve as a waste repository for produced water. Produced water or formation water is a by-product of the production of oil and natural gas. When the oil or natural gas is extracted from the ground a certain amount of water present in the geologic formation is also brought to the surface. The constituents of produced water vary from formation to formation. To a lesser extent, Basin also accepts drilling muds, frac gels, reserve fluids, and other oil field wastes for disposal. Basin's facility is located on a twenty-two (22) acre site approximately two and one-half (2.5) miles north of Bloomfield, New Mexico on the west side of state

Highway 44 as the road proceeds north toward Aztec. The facility presently includes a large evaporation pond capable of holding some four million gallons of fluid, twelve (12) lined mud pits, and numerous storage tanks in various facets of the operation. The facility opened for business on or about October 1, 1985.

8. The Basin facility is subject to and regulated by the New Mexico Oil Conservation Division ("OCD").

9. The Basin Disposal Facility is located in San Juan County on Highway 44 between Bloomfield and Aztec, New Mexico, in a rural, unzoned, mixed use area.

10. The location, design, construction, and operation of the facility were approved by the OCD and were in compliance with all applicable permits, rules, regulations and criteria of the OCD.

11. Plaintiffs are all citizens and residents of San Juan County, New Mexico with the following exceptions: Harold Pacheco currently resides in California, Bobbie White and Serena White currently reside in California, Kimberly Brockwell currently resides in Texas. At the time these plaintiffs suffered the injuries complained of in this lawsuit, they were residents of San Juan County, New Mexico.

12. All other plaintiffs either currently reside in the immediate vicinity of Basin or did so at relevant times since the waste site was opened in October of 1985.

13. Basin started to emit hydrogen sulfide gas at least as early as the spring of 1987.

14. The levels of hydrogen sulfide gas emitted from Basin have been measured in a range between 0.1 and 300 parts per million (ppm). The Gas-Tech monitor used by Basin operators to measure ambient air emissions of hydrogen sulfide was unreliable. The monitor readings taken from that monitor were and are unreliable and have been systemically measuring the ambient air hydrogen sulfide levels below what the levels were in fact. Defendants' own expert, Dr. Rabinovitz, found in the fall of 1988 that Basin's monitor was incapable of calibration and that it had been underrecording hydrogen sulfide levels.

15. The emissions of hydrogen sulfide from Basin have continued up to the time of trial, in varying degrees.

16. The emissions of hydrogen sulfide from Basin carry over to the homes of the plaintiffs in sufficient concentrations to cause adverse physical and psychological effects and to create intolerably obnoxious odors.

17. The emissions of hydrogen sulfide from Basin carry over to highway 44 and throughout the surrounding area for a distance of approximately .5 to 1.0 mile north and 1.0 to 1.5 miles south. The odors are obnoxious and offensive to members of the public.

18. The spray system operated by Basin caused mist from Basin to carry over to the homes and property of the Payne family, Pat Hargis, and the Crawford family. This occurred at least during March of 1986. The mist left a powdery particulate residue as if a salty substance had been sprinkled on their motor vehicles which was hard to remove and damaged the paint and roof of the vehicles.

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19. During the summer of 1987, a rain storm flushed materials which Basin had allowed to seep into the arroyo immediately south of the facility down the arroyo and onto the property of the Payne family and Mack Mantle. The "green foam" which was carried onto these plaintiffs' properties left a scummy residue.

20. The emissions of hydrogen sulfide from Basin were caused by the activity of bacteria which existed in the anaerobic environment created in the main evaporation pond.

21. The hydrogen sulfide emissions were caused by the design and operation of the waste disposal facility including the following acts and omissions by Basin and the individual defendants.

- a. the depth of the pond in excess of eleven feet;
- b. the acceptance of volumes of produced water two to three times in excess of the design capacity;
- c. the increase in the maximum water level of the pond;
- d. the operation of the spray system;
- e. the failure to monitor incoming loads of produced water from hydrogen sulfide prior to the summer of 1987;
- f. the failure to permit loads of produced water to settle prior to being placed in the main evaporation pond;
- g. the failure to increase the number of settling tanks to accommodate the increased volume of produced water;
- h. the ongoing presence of free-floating oil on the surface of the main evaporation system;
- i. the failure to remove sediments and sludge from the main evaporation pond;

j. the policy of the defendants to take every load of produced water brought to the facility regardless of its source or content;

k. the failure to exercise due caution with regard to loads of materials which may have contained high concentrations of bacteria, sulfides, or sulfates;

l. the decision to accept loads of produced water containing high concentrations of hydrogen sulfide and to store those loads in tanks with vents exposing the contents to the atmosphere.

22. Jerry Sandel, David Turner, and D. C. Turner made all of the decisions concerning the operation and maintenance of the facility including those identified in paragraph 18 above which caused the emissions of hydrogen sulfide.

23. Jerry Sandel, David Turner, and D. C. Turner established all of the policies and procedures which governed the operation of Basin including those identified in paragraph 18 above which caused the emissions of hydrogen sulfide.

24. A major contributing factor to the hydrogen sulfide problem was the individual defendants' choice of location for the waste disposal site. At the time the defendants purchased the site, there was a trailer located on the land where Ron Karcher was then living. In addition to Mr. Karcher, there were at least sixteen (16) families living within one-half mile of the location chosen by the defendants for their waste disposal facility. Including

within this group were forty-five (45) of the plaintiffs comprising some twelve (12) family groups.

25. The fifteen (15) remaining plaintiffs had either: (1) purchased the property prior to the building of Basin and were in the process of preparing the land in order to move to the site; or (2) move in with relatives who were already living there; or (3) were born there.

26. The unlined mud pits located to the west of the main evaporation pond were an ongoing problem. The original two pits were increased to four sometime in the winter of 1986. The pits were expanded to serve as a storage place for produced water because the main evaporation pond was reaching its capacity. The storage of produced water in the unlined mud pits was a violation of the OCD directives concerning what materials could be stored in the mud pits. Ultimately, the number of mud pits was expanded to twelve and all but one, were subsequently lined.

27. The presence of oil in the mud pits has been a recurrent problem which the defendants have failed to remedy despite repeated and ongoing directives from the OCD. There continues to be oil in the mud pits as found by the Court on its visit to the facility on December 22, 1988. Oil in the mud pits during the warm months of the year volatizes and causes offensive hydrocarbon odors.

28. The emissions of hydrogen sulfide from Basin caused the plaintiffs to experience adverse health effects. The emissions of hydrogen sulfide caused the following physical effects either by direct exposure or as an indirect effect resulting from the stress

of living in a noxious environment: eye irritation, nose irritation, throat irritation, lung irritation, headaches, nausea, vomiting, bloody noses, insomnia, irritability, and diminished concentration.

29. The emissions of hydrogen sulfide from Basin also caused the plaintiffs to suffer adverse psychological effects. The emissions of hydrogen sulfide from Basin caused the plaintiffs to experience anxiety, depression, anger, and frustration. The emissions of hydrogen sulfide also caused Jennifer Crawford, Jessica Crawford, and Amanda Payne to develop post-traumatic stress disorder.

30. There is a need in San Juan County for disposal facilities for produced water. Basin, however, has accepted produced waters regardless of whether the source was San Juan County or even New Mexico. In fact, within weeks of opening on October 1, 1985, Basin's volume of intake was 1500 to 2000 bbls per day. The design capacity of the evaporation pond was 750 bbls. per day. A substantial or significant portion of this produced water did not come from the vulnerable areas in the San Juan Basin, but rather was trucked in from the Amoco fields in southern Colorado. Chief Transport Co., owned by the Turners, had a contract with Amoco to transport its produced water to the Basin disposal pond, including the produced waters from Colorado.

31. The individual defendants knew, from the time they first started operating the Basin facility in October of 1985, that produced water contained materials with dangerous properties and spe-

cifically knew that hydrogen sulfide was one of those dangerous materials in produced water.

32. The individual defendants failed to institute any policies or procedures to adequately protect the public and plaintiffs from these known dangers.

33. The emissions of hydrogen sulfide from Basin invaded the homes and property of plaintiffs. These hydrogen sulfide emissions were real and appreciable invasions into plaintiffs' homes and onto their property which were obnoxious and intolerable to normal persons in this particular locality.

34. The emissions of hydrogen sulfide from Basin interfered with and disrupted plaintiffs' freedom from annoyance and discomfort in the use and enjoyment of their land.

35. The emissions of hydrogen sulfide from Basin substantially interfered with plaintiffs' private use and enjoyment of their land.

36. Defendants' conduct with regard to the operation of Basin, at least from late May 1987 until the present, was intentional because during that time defendants knew that their conduct was causing the emissions of hydrogen sulfide or knew that the emissions of hydrogen sulfide was substantially certain to result from their conduct.

37. Defendants' conduct and operation of the waste disposal site was unreasonable because the gravity of the harm caused by the emissions of hydrogen sulfide was substantial and is continuing. The emissions of hydrogen sulfide affected the lives and property

where plaintiffs lived; it invaded their homes. The location of Basin was in an area of multiple uses, but there was a substantial residential population within close proximity to the disposal site at the time that defendants purchased the site and commenced construction. The burden on plaintiffs to avoid the harm is substantial and significant. The cost of relocating, the only practical means of avoiding the hydrogen sulfide emissions, is virtually prohibitive for some of these plaintiffs.

38. The conduct of defendants, from the time of decision to locate the site at its present location in August of 1985 to the present, created an unreasonable risk of a significant, substantial and unreasonable invasion of plaintiffs' use and enjoyment of their land which was a reasonably foreseeable occurrence of defendants' conduct.

39. Once the problem of hydrogen sulfide emissions from Basin arose, the efforts undertaken by the defendants to remedy the problem were not reasonable. Defendants disregarded the advice and counsel of experts in the trade including the advice and recommendations of persons from the Oil Conversation Division and from the Environmental Improvement Division of the New Mexico Health and Environment Department.

40. Among the unreasonable actions or omissions of defendants in failing to reasonably or adequately cure the known conditions causing the hydrogen sulfide emissions are the following:

a. the failure to drain the pond and clean out the sludge which was a major source of the hydrogen sulfide emissions because the sludge was a concentrated anaerobic environment;

b. the failure to install, in a timely manner, an adequate aeration system;

c. installing an inadequate and underpowered aeration system, when defendants belatedly installed one in August of 1988;

d. the continued use of the spray system after it was known or reasonably should have been known to defendants that the operation of the spray system would "strip" the water of hydrogen sulfide and thereby cause increased offensive and unhealthy hydrogen sulfide emissions;

e. continuing to accept produced water and other drilling fluids at rates in excess of the facility's design capacity and thereby continuing conditions which would maintain an anaerobic environment;

f. continuing to take produced water with unreasonably high levels of hydrogen sulfide, sulfides, and sulfates;

g. selection of the Biogenesis material as the primary mechanism of chemical remediation, without adequate investigation and under circumstances in which defendant knew or reasonably should have known that the Biogenesis material would not effect an adequate remedy to the conditions causing hydrogen sulfide emissions;

h. the treatment of the pond with concentrations of chemicals which defendants knew to be insufficient to effect a solution to the hydrogen sulfide problem;

i. the storage of produced water containing high concentrations of dissolved hydrogen sulfide in storage tanks which were not completely closed, thereby allowing hydrogen sulfide emissions into the atmosphere.

41. The defendants knowingly created and maintained the waste disposal facility which since at least late May 1987 and continuing to the time of trial generated hydrogen sulfide in sufficient concentrations to affect the health and well-being of the plaintiffs and other persons residing in the area.

42. The emissions of hydrogen sulfide affect a substantial number of persons, both plaintiffs and non-plaintiffs, who live and work in the vicinity of Basin.

43. The emissions of hydrogen sulfide from Basin disperse throughout the surrounding area and cause offensive and obnoxious odors affecting persons driving on highway 44 and those individuals who live and work in the vicinity of Basin. These emissions of hydrogen sulfide have caused adverse health effects to some persons who have traveled the public roads and highway near Basin or who work in the vicinity.

44. Basin and the individual defendants are without lawful authority to create these emissions of hydrogen sulfide.

45. The emissions of hydrogen sulfide are injurious to the public health and welfare.

46. The emissions of hydrogen sulfide interfere with the exercise and enjoyment of public rights and the right to use the public thoroughfares in the residential areas around Basin and on the highway.

47. The emissions of hydrogen sulfide from Basin have diminished the property value of the land surrounding the facility.

48. The emissions of hydrogen sulfide from Basin constitute an unreasonable interference with rights common to the public.

49. The conduct causing the emissions of hydrogen sulfide is continuing even after defendants knew it had a significant effect upon public rights.

50. The conduct of defendants directly infringed the right of possession to land enjoyed by the Hargis family.

51. The conduct of defendants directly infringed the right of possession to land enjoyed by Tim Payne and his family.

52. The defendants owed plaintiffs a duty to use reasonable care to insure that the operation of Basin would not injure them.

53. The defendants' conduct as found above was not reasonable and it was reasonably foreseeable that the hydrogen sulfide, which defendants knew was a material with dangerous properties present in produced water, would be emitted from the evaporation pond and that oils on the mud pits would volatilize and cause offensive odors.

54. A waste disposal facility for produced waters as operated by defendants is a dangerous activity.

55. Defendants knew or should have known that plaintiffs were a risk from this activity.

56. Jerry Sandel, David Turner, and D. C. Turner, as officers and directors of Basin, directly participated in or had knowledge amounting to acquiescence of the tortious conduct which caused plaintiffs' injuries. The conduct of the individual defendants in the operation of Basin was unreasonable and intentional because the individual defendants knew or should have known that their conduct in operating the facility would interfere with plaintiffs' health, comfort and use as well as enjoyment of their property.

57. The emissions of hydrogen sulfide was continued from at least late May of 1987 up until the time of trial. There is a strong temperature dependence on the anaerobic bacterial reaction which generates the hydrogen sulfide emissions so that the emissions problems are dramatically increased as the temperature rises. The evidence establishes that it is substantially probable that unless adequate remedial measures are taken, hydrogen sulfide emissions will continue in the future.

58. The frequency of the hydrogen sulfide emissions and its reoccurrence renders a complete remedy at law inadequate.

59. All of the plaintiffs have been damaged by the hydrogen sulfide emissions from Basin. Some of the plaintiffs moved away from their property and left the site because of fear for their own health. Other plaintiffs moved away because of concerns for their children's health and well-being. Those plaintiffs who were not in a position to move away permanently found that when the hydrogen

sulfide emissions enveloped their homes they would leave their homes and go to the homes of relatives, or friends, or campsites, or anywhere they could to get away from the odors. They would have to shut off their air coolers which otherwise would suck the hydrogen sulfide fumes into their homes, and close their windows and doors, to escape the noxious odors, and resulting in intolerable heat and loss of ventilation in plaintiffs' homes. The hydrogen sulfide emissions affected their comfort as well as plaintiffs' social relations. The odors discouraged plaintiffs from inviting friends and family to their homes and otherwise using their homes and property in the normal social way.

60. The majority of the plaintiffs were evacuated from their homes on July 7, 1987 on two different occasions for a total of eight days while the disposal pit was being chemically treated and lodged in motels at Aztec and Farmington at Basin's expense.

61. Plaintiffs retained counsel in order to abate the nuisance caused by the emissions of hydrogen sulfide from Basin.

62. Counsel for plaintiffs have expended considerable amounts of time in attempting to require defendants to abate the nuisance.

63. The evidence herein establishes that the plaintiffs suffered adverse health effects for at least six months of each year for the years 1987 and 1988; that plaintiffs lost the use and enjoyment of their property through the annoyance, inconvenience, discomfort and vexation caused by the hydrogen sulfide emissions while living at the disposal site; that some of the plaintiffs suffered psychological injuries in varying degrees, some of which will

require psychological counseling; that some of the plaintiffs experienced diminution in the value of their property; that some of the plaintiffs incurred expenses in moving their mobile homes away from the Basin disposal site; other plaintiffs incurred other special damages which are hereinafter set forth. That all of such damages were caused by the hydrogen sulfide emissions from the disposal site or the operation of the facility, and that by reason thereof, the plaintiffs are entitled to an award of damage as follows:

64. Jerry Beal suffered nausea, nose-bleeding, headaches, stomach-ache, difficulty in breathing, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 5,000.00
Psychological injuries:	\$ 3,000.00
Psychological counselling	\$ 4,320.00
Loss of use and enjoyment of Property:	\$ 5,000.00
Property loss (diminished value):	<u>\$ 3,240.00</u>
Total:	\$20,560.00

65. Gail Beal suffered nausea, eye-irritation, nose-bleeding, headaches, burning eyes, sinus infections, and is awarded damages as follows:

Physical injuries:	\$ 5,000.00
Psychological injuries:	\$ 2,000.00
Psychological counselling	\$ 2,160.00
Property loss (diminished value):	\$ 3,240.00
Loss of use and enjoyment of Property:	<u>\$ 5,000.00</u>
Total:	\$17,400.00

66. Justin Lesky, age 15, suffered nausea, eye irritation, nose-bleeding, headaches and is awarded damages as follows:

Physical injuries:	\$ 2,750.00
Psychological injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	<u>\$ 2,750.00</u>
Total:	\$ 7,000.00

67. Terry G. Crawford suffered nausea, headaches, burning eyes, sore throat, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	\$ 6,000.00
Property loss (diminished value):	<u>\$ 3,360.00</u>
Total:	\$16,860.00

68. Judy Crawford suffered nausea, headaches, sore throat, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 2,000.00
Psychological counselling:	\$ 2,160.00
Loss of use and enjoyment of Property:	\$ 6,000.00
Property loss (diminished value):	<u>\$ 3,360.00</u>
Total:	\$19,520.00

69. Timothy Crawford, age 15, suffered nausea, headaches, and is awarded damages as follows:

Physical injuries:	\$ 2,000.00
Loss of use and enjoyment of Property:	<u>\$ 4,000.00</u>
Total:	\$ 6,000.00

70. Jennifer Crawford, age 12, suffered headaches, post-traumatic anxiety and depression, and is awarded damages as follows:

Physical injuries:	\$ 3,000.00
Psychological injuries:	\$ 3,000.00
Psychological counselling:	\$ 6,480.00
Loss of use and enjoyment of Property:	<u>\$ 3,000.00</u>
Total:	\$15,480.00

71. Jessica Crawford, age 12, suffered eye-irritation, nose-bleeding, headaches, burning eyes, post-traumatic stress disorder, and is awarded damages as follows:

Physical injuries:	\$ 3,000.00
Psychological injuries:	\$ 3,000.00
Psychological counselling:	\$ 6,480.00
Loss of use and enjoyment of Property:	<u>\$ 3,000.00</u>
Total:	\$15,480.00

72. Jimmie Brockwell suffered eye-irritation, headaches, burning eyes, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Loss of use and enjoyment of Property: (residence)	\$ 6,000.00
Property loss (diminished value):	\$10,750.00
1/2 interest in 20 acre tract:	<u>\$15,120.00</u>
Total:	\$37,870.00

73. Carolyn Brockwell suffered headaches, sore throat, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Loss of use and enjoyment of Property:	\$ 6,000.00
Property loss (diminished value of residence)	<u>\$10,750.00</u>
Total:	\$22,750.00

74. Kimberly Ann Brockwell suffered headaches, and is awarded damages as follows:

Physical injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	<u>\$ 3,000.00</u>
Total:	\$ 4,500.00

75. Larry Charley suffered eye-irritation, nose-bleeding, burning eyes, dizziness, moderately severe psychological stress, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 3,000.00
Psychological counselling:	\$ 4,320.00
Loss of use and enjoyment of Property:	\$ 6,000.00
Property loss (diminished value):	\$ 2,920.00
Lost use of sheep and horse corrals:	<u>\$ 440.00</u>
Total:	\$22,680.00

76. Cora Charley suffered nausea, nose-bleeding, headaches, sore throat, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 2,000.00
Psychological counselling:	\$ 2,160.00
Loss of use and enjoyment of Property:	\$ 6,000.00
Property loss (diminished value):	<u>\$ 2,920.00</u>
Total:	\$19,080.00

77. Larriall Charley suffered eye-irritation, nose-bleeding, headaches, irritation and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	<u>\$ 6,000.00</u>
Total:	\$13,500.00

78. Farrell Charley, Age 10, suffered nose-bleeding, headaches, sore throat, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 3,000.00
Loss of use and enjoyment of Property:	<u>\$ 3,000.00</u>
Total:	\$ 6,000.00

79. Delauren Ann Charley, age 4, suffered headaches, stomach-ache, sore throat, nose irritation, and is awarded damages as follows:

Physical injuries:	\$ 3,000.00
Loss of use and enjoyment of Property:	<u>\$ 3,000.00</u>
Total:	\$ 6,000.00

80. Dolores Mescale (Long) suffered eye-irritation, nose-bleeding, headaches, sore throat, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 1,500.00
Psychological counselling:	\$ 2,160.00
Loss of use and enjoyment of Property:	<u>\$ 6,000.00</u>
Total:	\$15,660.00

81. Lucy Largo suffered from bronchitis sinus (laryngitis), and is awarded damages as follows:

Physical injuries:	\$ 500.00
Loss of use and enjoyment of Property:	<u>\$ 500.00</u>
Total:	\$ 1,000.00

82. Corlina Largo suffered eye-irritation, nose-bleeding, headaches, and is awarded damages as follows:

Physical injuries:	\$ 2,000.00
Psychological injuries:	\$ 750.00
Loss of use and enjoyment of Property:	<u>\$ 2,000.00</u>
Total:	\$ 4,750.00

83. Raymond De Herrera suffered nausea, eye-irritation, headaches, stomach-ache, dizziness, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 3,000.00
Psychological injuries:	\$ 2,000.00
Psychological counselling:	\$ 2,160.00
Loss of use and enjoyment of Property:	\$ 3,000.00
Property loss - improvements cost:	
2.5 acre tract	\$ 1,566.32
4.7 acre tract	\$ 691.42
Moving expenses (2 mobile home trailers):	<u>\$ 2,194.83</u>
Total:	\$14,612.57

84. Dorothy De Herrera suffered nausea, headaches, stomach-ache, diarrhea, and is awarded damages as follows:

Physical injuries:	\$ 3,000.00
Loss of use and enjoyment of Property:	\$ 3,000.00
Property loss/improvements lost:	
2.5 acre tract	\$ 1,566.32
4.7 acre tract	\$ 691.42
Moving expenses (2 mobile home trailers):	<u>\$ 2,194.83</u>
Total:	\$10,452.57

85. Abel Gallegos suffered headaches, burning eyes, stomach-ache, dizziness, sore throat, vomiting, irritation, and is awarded damages as follows:

Physical injuries:	\$ 2,000.00
Psychological injuries:	\$ 750.00
Loss of use and enjoyment of Property:	\$ 2,000.00
Moving expenses:	<u>\$ 500.00</u>
Total:	\$ 5,250.00

86. Cruz Gallegos suffered eye-irritation, headaches, vomiting, irritation, and is awarded damages as follows:

Physical injuries:	\$ 2,000.00
Psychological injuries:	\$ 750.00
Loss of use and enjoyment of Property:	\$ 2,000.00
Moving expenses:	<u>\$ 500.00</u>
Total:	\$ 5,250.00

87. Mary Lou Castillo (Gallegos), age 14, suffered nose-bleeding, eyes, stomach-ache, eye irritation, and is awarded damages as follows:

Physical injuries:	\$ 750.00
Psychological injuries:	\$ 750.00
Loss of use and enjoyment of Property:	<u>\$ 800.00</u>
Total	\$ 2,300.00

88. Rafael V. Castillo (Gallegos), age 12, suffered headaches, stomach-ache, throat, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 750.00
Psychological injuries:	\$ 2,000.00
Psychological counselling:	\$ 4,320.00

Loss of use and enjoyment of Property: \$ 800.00
Total \$ 7,870.00

89. Lawrence A. Gallegos is awarded special damages as follows:

Improvements made to property of Abel Gallegos,
labor and backhoe rental \$ 1,840.00

90. Patricia Hargis suffered nausea, eye-irritation, nose-bleeding, severe headaches, nervousness, vomiting, and is awarded damages as follows:

Physical injuries: \$ 6,000.00
Psychological injuries: \$ 2,000.00
Psychological counselling: \$ 4,320.00
Loss of use and enjoyment of Property: \$ 6,000.00
Property loss (diminished value): \$ 7,560.00
Trespass damages: \$ 1,000.00
Total: \$26,880.00

91. William Hargis suffered nausea, headaches, stomach-ache, dizziness, and is awarded damages as follows:

Physical injuries: \$ 3,000.00
Psychological injuries: \$ 1,500.00
Psychological counselling: \$ 2,160.00
Loss of use and enjoyment of Property: \$ 3,000.00
Total: \$ 9,660.00

92. Charles Hargis suffered nausea, eye-irritation, headaches, burning eyes, nervousness, nose irritation, and is awarded damages as follows:

Physical injuries: \$ 6,000.00
Psychological injuries: \$ 2,000.00
Psychological counselling: \$ 2,160.00

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| | Loss of use and enjoyment of Property: | <u>\$ 6,000.00</u> |
| | Total: | \$ 16,160.00 |
93. Mack Mantle suffered nausea, eye-irritation, nose-bleeding, headaches, burning eyes, stomach-ache, dizziness, sore throat, vomiting, irritation, and is awarded damages as follows:
- | | |
|--|--------------------|
| Physical injuries: | \$ 2,000.00 |
| Psychological injuries: | \$ 750.00 |
| Psychological counselling: | \$ 2,160.00 |
| Loss of use and enjoyment of Property: | <u>\$18,800.00</u> |
| Total: | \$23,710.00 |
94. Brooke McDaniel, age 15, suffered eye-irritation, nose-bleeding, headaches, sleeplessness, sore throat, and is awarded damages as follows:
- | | |
|--|--------------------|
| Physical injuries: | \$ 3,000.00 |
| Psychological injuries: | \$ 1,500.00 |
| Loss of use and enjoyment of Property: | <u>\$ 3,000.00</u> |
| Total: | \$ 7,500.00 |
95. Ronnie McDaniel suffered nausea, nose-bleeding, headaches, and is awarded damages as follows:
- | | |
|--|------------------|
| Physical injuries: | \$ 4,500.00 |
| Psychological injuries: | \$ 1,500.00 |
| Loss of use and enjoyment of Property: | \$ 4,500.00 |
| Special damages: Moving expenses: | <u>\$ 500.00</u> |
| Total: | \$11,000.00 |
96. Teresa McDaniel suffered eye-irritation, nose-bleeding, burning eyes, sore throat, irritation, and is awarded damages as follows:
- | | |
|--------------------|-------------|
| Physical injuries: | \$ 6,000.00 |
|--------------------|-------------|

Psychological injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	\$ 6,000.00
Property loss (diminished value):	<u>\$ 4,120.00</u>
Total:	\$17,620.00

97. DeAnne McDaniel, age 18, suffered nose-bleeding, headaches, stomach-ache, dizziness, and is awarded damages as follows:

Physical injuries:	\$ 3,000.00
Psychological injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	<u>\$ 3,000.00</u>
Total:	\$ 7,500.00

98. MBM, a partnership, is awarded damages for property loss as follows:

1/2 loss of MBM, 1/2 loss to Brockwell	<u>\$15,120.00</u>
Total:	\$15,120.00

99. Gary McDaniel suffered eye-irritation, headaches, anxiety, shortness of breath, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 2,000.00
Loss of use and enjoyment of Property:	\$ 6,000.00
Property loss (diminished value):	<u>\$ 4,120.00</u>
Total:	\$18,120.00

100. Johanna McDaniel suffered nausea, headaches, sore throat, diarrhea, and is awarded damages as follows:

Physical injuries:	\$ 4,500.00
Psychological injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	\$ 4,500.00

Moving expenses:	\$ <u>500.00</u>
Total:	\$11,000.00

101. Rhonda McDaniel, age 9, suffered nausea, nose-bleeding, headaches, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 2,250.00
Loss of use and enjoyment of Property:	\$ <u>2,250.00</u>
Total:	\$ 4,500.00

102. Joshua McDaniel, age 4 suffered nausea, eye-irritation, vomiting, irritation, and is awarded damages as follows:

Physical injuries:	\$ 2,250.00
Loss of use and enjoyment of Property:	\$ <u>2,250.00</u>
Total:	\$ 4,500.00

103. Harold Pacheco suffered headaches, and is awarded damages as follows:

Physical injuries:	\$ 2,000.00
Loss of use and enjoyment of Property:	\$ 2,000.00
Property loss (diminished value):	\$ <u>3,720.00</u>
Total:	\$ 7,720.00

104. Bessie Pacheco suffered nausea, slight depression and is awarded damages as follows:

Physical injuries:	\$ 3,500.00
Psychological injuries:	\$ 875.00
Psychological counselling:	\$ 2,160.00
Loss of use and enjoyment of Property:	\$ 3,500.00
Property loss (diminished value):	\$ <u>3,720.00</u>
Total:	\$13,755.00

105. Darryl Pacheco, age 16, suffered nose-bleeding, headaches, shortness of breath and is awarded damages as follows:

Physical injuries:	\$ 1,750.00
Psychological injuries:	\$ 875.00
Loss of use and enjoyment of Property:	<u>\$ 1,750.00</u>
Total:	\$ 4,375.00

106. Darrick Pacheco, age 9, suffered nose-bleeding, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 1,750.00
Loss of use and enjoyment of Property:	<u>\$ 1,750.00</u>
Total:	\$ 3,500.00

107. Julie Ann Pacheco, age 10, suffered nose-bleeding, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 1,750.00
Loss of use and enjoyment of Property:	<u>\$ 1,750.00</u>
Total:	\$ 3,500.00

108. Tim Payne suffered nausea, eye-irritation, nose-bleeding, sore throat, difficulty in breathing, stress, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 1,500.00
Psychological counselling:	\$ 2,160.00
Loss of use and enjoyment of Property:	\$ 6,000.00
Property loss (diminished value):	\$ 3,880.00
Trespass damages:	<u>\$ 1,000.00</u>
Total:	\$20,540.00

109. Teresa Payne suffered nausea, eye-irritation, headaches, upper respiratory infection, sore throat, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 3,000.00
Psychological counselling:	\$ 4,320.00

Loss of use and enjoyment of Property: \$ 6,000.00
Property loss (diminished value): \$ 3,880.00
Total: \$23,200.00

110. Lyn Payne, age 14, suffered nausea, eye-irritation, headaches, dizziness, and is awarded damages as follows:

Physical injuries: \$ 3,000.00
Loss of use and enjoyment of Property: \$ 3,000.00
Total: \$ 6,000.00

111. Amanda Payne, age 6, suffered nausea, eye-irritation, headaches, sore throat, nose irritation, and is awarded damages as follows:

Physical injuries: \$ 3,000.00
Psychological injuries: \$ 3,000.00
Psychological counselling: \$ 3,000.00
Re-evaluation: \$ 1,000.00
Loss of use and enjoyment of Property: \$ 3,000.00
Total: \$13,000.00

112. Doug Shipp, age 18, suffered headaches, burning eyes, and is awarded damages as follows:

Physical injuries: \$ 3,000.00
Loss of use and enjoyment of Property: \$ 2,000.00
Total: \$ 5,000.00

113. Kenneth N. Raney suffered nausea, headaches, burning eyes, stomach-ache, dizziness, mental stress, and is awarded damages as follows:

Physical injuries: \$ 6,000.00
Psychological injuries: \$ 2,000.00
Psychological counselling: \$ 4,320.00
Loss of use and enjoyment of Property: \$ 6,000.00

Property loss (diminished value):	<u>\$ 6,800.00</u>
Total:	\$25,120.00

114. Rose Raney suffered nausea, nose-bleeding, headaches, burning eyes, stomach-ache, dizziness, sore throat, vomiting, irritation, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Psychological injuries:	\$ 2,000.00
Psychological counselling:	\$ 4,320.00
Loss of use and enjoyment of Property:	\$ 6,000.00
Property loss (diminished value):	<u>\$ 6,800.00</u>
Total:	\$25,120.00

115. Richard Raney suffered nausea, eye-irritation, sore throat, and is awarded damages as follows:

Physical injuries:	\$ 6,000.00
Loss of use and enjoyment of Property:	<u>\$ 6,000.00</u>
Total:	\$12,000.00

116. Kenneth J. Raney suffered headaches, sore throat, nose irritation, and is awarded damages as follows:

Physical injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	\$ 1,500.00
Special damages: Moving expenses:	<u>\$ 329.25</u>
Total:	\$ 3,329.25

117. Traci Raney suffered nausea, headaches, burning eyes, stomach-ache, dizziness, vomiting, irritation, and is awarded damages as follows:

Physical injuries:	\$ 1,500.00
Psychological injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	<u>\$ 1,500.00</u>
Total:	\$ 4,500.00

118. Michael Raney, age 1, suffered irritability and is awarded damages as follows:

Physical injuries:	\$ 750.00
Total:	\$ 750.00

119. Lila Saiz suffered nausea, eye-irritation, nose-bleeding, headaches, burning eyes, stomach-ache, dizziness, sore throat, vomiting, irritation, and is awarded damages as follows:

Physical injuries:	\$ 3,500.00
Psychological injuries:	\$ 1,500.00
Psychological counselling:	\$ 4,320.00
Loss of use and enjoyment of Property:	\$ 3,500.00
Property loss (diminished value):	\$ 2,080.00
Special Damages: Moving expenses:	\$ 225.00
Total:	\$15,125.00

120. Bobby Carl White suffered nausea, nose-bleeding, headaches, nose irritation, and is awarded damages as follows:

Physical injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	\$ 1,500.00
Total:	\$ 3,000.00

121. Serene M. White suffered nausea, headaches, vomiting, and is awarded damages as follows:

Physical injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	\$ 1,500.00
Total:	\$ 3,000.00

122. Bill Williams suffered nausea, eye-irritation, nose-bleeding, headaches, burning eyes, stomach-ache,

dizziness, sore throat, vomiting, irritation, and is awarded damages as follows:

Physical injuries:	\$ 4,000.00
Psychological injuries:	\$ 750.00
Loss of use and enjoyment of Property:	\$ 4,000.00
Property loss (diminished value):	\$ 2,080.00
Special damages: Moving expenses:	<u>\$ 1,000.00</u>
Total:	\$11,830.00

123. Marty De Herrera, age 18, suffered nausea, eye irritation, and is awarded damages as follows:

Physical injuries:	\$ 1,500.00
Loss of use and enjoyment of Property:	<u>\$ 1,500.00</u>
Total:	\$ 3,000.00

124. Tonya McDaniel, age 6, suffered nausea, bloodshot eyes, headaches, vomiting and is awarded damages as follows:

Physical injuries:	\$ 2,250.00
Loss of use and enjoyment of Property:	<u>\$ 2,250.00</u>
Total:	\$ 4,500.00

125. The hourly rates for plaintiffs' attorneys as reflected in their application for attorneys' fees are reasonable. The Court finds that the time expended by plaintiffs attorneys as submitted in their application, should be reduced by ten percent (10%) to reflect any unnecessary use of more than one attorney for certain tasks.

126. On the basis of the plaintiffs' application for attorneys' fees, plaintiffs are entitled to \$206,329.50 as a reasonable attorneys' fee.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter in this action.

2. The operation of Basin by the defendants created a private nuisance which proximately cause plaintiffs' injuries.

3. The operation of Basin by the defendants created a public nuisance. Plaintiffs are entitled to an award of a reasonable attorney's fee for abating the public nuisance.

4. Defendants were negligent in the operation of Basin. Defendants' negligence was a proximate cause of plaintiffs' injuries.

5. Defendants' negligent operation of the waste disposal site caused a trespass of fluids and particulate matter from Basin on the properties of the Payne and Hargis families.

6. Jerry Sandel, David Turner and D.C. Turner, as officer and directors of Basin, negligently managed, supervised and operated the waste disposal site and in addition directly participated in the conduct and acts which caused the public and private nuisance. Jerry Sandel, David Turner, and D.C. Turner are individually liable for plaintiffs' damages.

7. The Court having found that there is a need for a commercial waste disposal facility for produced water in San Juan County concludes that a balancing of the equities herein compels the Court to rule that plaintiffs are not entitled to injunctive relief. The Court further concludes that the injuries to the plaintiff are out-

weighed by the harm that would result by ordering the waste disposal facility to be shutdown and to cease operating completely.

8. The Court also concludes that the continued operation of the disposal facility under conditions to be set by the Court will eliminate the nuisance created by the past operation of the facility and thereby protect the underground waters in the vulnerable areas in San Juan County.

9. Plaintiffs have no adequate remedy at law except by a multiplicity of suits because of the continuing nature of the nuisance.

10. Plaintiffs are not entitled to an award of punitive damages.

11. The Court concludes that the nuisance created can be abated if the conditions for the continued operation of the facility as set forth herein are complied with. Accordingly, the facility can continue its operations under the following conditions:

- (1) Maintain the disposal pit in an aerobic condition.
- (2) Keep the level of water in the disposal pit at a depth of no more than 3 feet.
- (3) Continue to operate the injection well for the disposal of excess produced water.
- (4) Keep the spray and aeration systems in operation.
- (5) Continue the present chemical treatment of the settling tanks and the disposal pit.
- (6) Cease the depositing of any oils in the disposal pit and in the mud pits.

- (7) Remove oils from said pits which are still present or which might accumulate in the future.
- (8) Continue monitoring the emissions of hydrogen sulfide and limit such emissions to 0.010 parts per million, in compliance with the ambient air quality standards as promulgated by the Environmental Improvement Board of the State of New Mexico under its Air Quality Control Regulation 201 dated June 15, 1981.
- (9) Monitor the build-up of sludge in the bottom of the disposal pit and remove same, if anaerobic conditions begin to develop in the disposal pit.

12. Plaintiffs are entitled to recover their costs as permitted by law.

13. The Court retains its equitable jurisdiction to enforce the conditions it finds necessary to abate the nuisance.

14. Plaintiffs are entitled to reasonable attorney's fee which includes a fee for attorney time only and not for paralegal time.

15. Plaintiffs' requested hourly rates are reasonable, but the Court finds that a reduction of ten percent (10%) for such attorney's requested fee is warranted to reflect the unnecessary use of more than one attorney for certain tasks.

STATE OF NEW MEXICO }
 COUNTY OF SAN JUAN }

I hereby certify that the above and
 Court Amended findings
 foregoing are a true and Perfect
 copy of the original on file in my said
 office.

Gregory T Ireland

Clerk of District Court

By Aina Garcia
 Deputy

Samuel Z. Montoya
 SAMUEL Z. MONTOYA
 District Judge Pro-Tem

FILED
DISTRICT COURT
SAN JUAN COUNTY,
N.M. Pm

JUN 6 1 33 PM '89

ELEVENTH JUDICIAL DISTRICT COURT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

No. CV-87-569-1102

STATE OF NEW MEXICO; TIMOTHY PAYNE,
et al.,

Plaintiffs,

v.

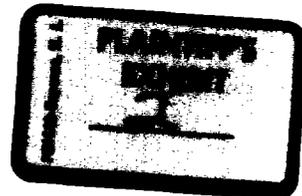
BASIN DISPOSAL, INC., et al.,

Defendants.

FINAL JUDGMENT

THIS MATTER having come on for trial on the merits in this Court beginning November 30, 1988, and the Court having entered its Findings of Fact and Conclusions of Law on March 13, 1989, and this Court having amended its Findings of Fact and Conclusions of Law in accordance with the evidence.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED in accordance with the Court's Amended Findings of Fact and Conclusions of Law that plaintiffs recover from defendants Basin Disposal, Inc., Jerry Sandel, D.C. Turner, and David Turner the following: Jerry Beal, \$20,560.00; Gail Beal, \$17,400.00; Justin Lesky, \$7,000.00; Terry G. Crawford, \$16,860.00; Judy Crawford, \$19,520.00; Timothy Crawford, \$6,000.00; Jennifer Crawford, \$15,480.00; Jessica Crawford, \$15,480.00; Jimmie Brockwell, \$37,870.00; Carolyn Brockwell, \$22,750.00; Kimberly Ann Brockwell, \$4,500.00; Larry



Charley, \$22,680.00; Cora Charley, \$19,080.00; Larriall Charley, \$13,500.00; Farrell Charley, \$6,000.00; Delauren Ann Charley, \$6,000.00; Dolores Mescala (Long), \$15,660.00; Lucy Largo, \$1,000.00; Corlina Largo, \$4,750.00; Raymond DeHerrera, \$14,612.57; Dorthy DeHerrera, \$10,452.57; Abel Gallegos, \$5,250.00; Cruz Gallegos, \$5,250.00; Mary Lou Castillo (Gallegos), \$2,300.00; Rafael V. Castillo (Gallegos), \$7,870.00; Lawrence A. Gallegos, \$1,840.00; Patricia Hargis, \$26,880.00; William Hargis, \$9,660.00; Charles Hargis, \$16,160.00; Mack Mantle, \$23,710.00; Brooke McDaniel, \$7,500.00; Ronnie McDaniel, \$11,000.00; Teresa McDaniel, \$17,620.00; DeAnne McDaniel, \$7,500.00; MBM, a partnership, \$15,120.00; Gary McDaniel, \$18,120.00; Johanna McDaniel, \$11,000.00; Rhonda McDaniel, \$4,500.00; Joshua McDaniel, \$4,500.00; Harold Pacheco, \$7,720.00; Bessie Pacheco, \$13,755.00; Darryl Pacheco, \$4,375.00; Darrick Pacheco, \$3,500.00; Julie Ann Pacheco, \$3,500.00; Tim Payne, \$20,540.00; Teresa Payne, \$23,200.00; Lynn Payne, \$6,000.00; Amanda Payne, \$13,000.00; Doug Shipp, \$5,000.00; Kenneth N. Raney, \$25,120.00; Rose Raney, \$25,120.00; Richard Raney, \$12,000.00; Kenneth J. Raney, \$3,329.25; Traci Raney, \$4,500.00; Michael Raney, \$750.00; Lila Saiz, \$15,125.00; Bobby Carl White, \$3,000.00; Serene M. White, \$3,000.00; Bill Williams, \$11,830.00; Marty DeHerrera, \$3,000.00; Tonya McDaniel, \$4,500.00 for a total of \$704,799.39 in compensatory damages, \$206,329.50 for a reasonable attorney's fee, plus plaintiffs' costs of \$55,119.01 as allowed by law, and pursuant to the Court's Order on Costs, entered in this cause, plus interest at the rate of fifteen percent

(15%) per annum from the date of entry of this Final Judgment until defendants pay this judgment in full; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants may operate their produced water disposal facility only under the following conditions:

1. that the defendants maintain the disposal pit in an aerobic condition;
2. keep the level of water in the disposal pit at a depth of no more than three (3) feet;
3. continue to operate the injection well for the disposal of excess produced water;
4. keep the spray and aeration systems in operation;
5. continue the present chemical treatment of the settling tanks and the disposal pit;
6. cease the depositing of any oils in the disposal pit and in the mud pits;
7. remove oils from said pits which are still present or which might accumulate in the future;
- * 8. continue monitoring the emissions of hydrogen sulfide and limit such emissions to 0.010 parts per million, in compliance with the ambient air quality standards as promulgated by the Environmental Improvement Board of the State of New Mexico under its Air Quality Control Regulation 201 dated June 15, 1981;
9. monitor the build-up of sludge in the bottom of the disposal pit and remove same, if anaerobic conditions begin to develop in the disposal pit.

FURTHER, this Court retains continuing jurisdiction to enforce the conditions it finds necessary, as set forth in this judgment, to abate the nuisance.

Samuel Z. Montoya
HONORABLE SAMUEL Z. MONTOYA
District Judge Pro Tem

APPROVED AS TO FORM:

WELLS & MANDE, P.A.

By Approved Telephonically
Deborah Mande
Attorneys for Defendants
301 Gold Avenue, SW
P.O. Box 1787
Albuquerque, NM 87103
(505) 243-3727

CARPENTER and GOLDBERG, P.A.

By David J. Stout
Joseph Goldberg
David J. Stout
Attorneys for Plaintiffs
1600 University, NE, #B
Albuquerque, NM 87102
(505) 243-1336

STATE OF NEW MEXICO }
COUNTY OF SAN JUAN } ssb
I hereby certify that the above and
foregoing final judgment
in Cause No. CV87-371 is a true and Perfect
copy of the original on file in my said
office. Gregory T Ireland
Rina Garcia
Deputy Clerk of District Court

RECEIVED

1981 JUN 15 PM 3: 59

STATE COMMISSION OF
PUBLIC RECORDS & ARCHIVES

State of New Mexico
Environmental Improvement Board
Crown Building, P. O. Box 968
Santa Fe, New Mexico 87503

AQCR 201

AIR QUALITY CONTROL REGULATION 201—AMBIENT AIR QUALITY STANDARDS
(Supersedes EIB/AQCR 201, filed December 7, 1979)

A. The maximum allowable concentrations of total suspended particulate in the ambient air are as follows:

	MAXIMUM CONCENTRATION
1. 24 - hour average	150 $\mu\text{g}/\text{m}^3$
2. 7 - day average	110 $\mu\text{g}/\text{m}^3$
3. 30 - day average	90 $\mu\text{g}/\text{m}^3$
4. Annual geometric mean	60 $\mu\text{g}/\text{m}^3$

B. When one or more of the following elements are present in the total suspended particulate, the maximum allowable concentrations of the elements involved, based on a thirty-day average, are as follows:

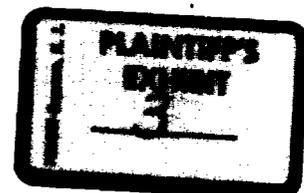
	MAXIMUM CONCENTRATION
1. Beryllium	0.01 $\mu\text{g}/\text{m}^3$
2. Asbestos	0.01 $\mu\text{g}/\text{m}^3$
3. Heavy metals (total combined)	10 $\mu\text{g}/\text{m}^3$

C. The maximum allowable concentrations of the following air contaminants in the ambient air are as follows:

EIB/AQCR 201

-1-

July 15, 1981



MAXIMUM CONCENTRATION

1. Sulfur Dioxide

a. For the State except the area within 3.5 miles of the Chino Mines Company smelter furnace stack at Hurley.

(i) 24 - hour average 0.10 ppm

(ii) annual arithmetic average 0.02 ppm

b. For the area within 3.5 miles of the Chino Mines Company smelter furnace stack at Hurley.

(i) 24 - hour average, not to be exceeded more than once per year 0.14 ppm

(ii) 3 - hour average, not to be exceeded more than once per year 0.50 ppm

(iii) annual arithmetic average 0.03 ppm

2. Hydrogen Sulfide

a. For the state, except the Pecos-Permian Basin Intrastate Air Quality Control Region (1-hour average, not to be exceeded more than once per year).

0.010 ppm

b. For the Pecos-Permian Basin Intrastate Air Quality Control Region ($\frac{1}{2}$ hour average).

0.100 ppm

c. After January 1, 1976, for within corporate limits of municipalities within the Pecos-Permian Basin Intrastate Air Quality Control Region ($\frac{1}{2}$ hour average).

0.030 ppm

1981 JUN 15 PM 3: 59

STATE COMMISSION OF
PUBLIC RECORDS & ARCHIVES

d. After January 1, 1978, for within five miles of the corporate limits of municipalities having a population of greater than twenty thousand and within the Pecos-Permian Basin Intrastate Air Quality Control Region ($\frac{1}{2}$ hour average).

0.030 ppm

3. Total Reduced Sulfur

a. For the state, except the Pecos-Permian Basin Intrastate Air Quality Control Region except for hydrogen sulfide (1-hour average).

0.003 ppm

b. For the Pecos-Permian Basin Intrastate Air Quality Control Region, except for hydrogen sulfide ($\frac{1}{2}$ hour average).

0.010 ppm

c. After January 1, 1976, for within corporate limits of municipalities within the Pecos-Permian Basin Intrastate Air Quality Control Region, except for hydrogen sulfide ($\frac{1}{2}$ hour average).

0.003 ppm

d. After January 1, 1978, for within five miles of the corporate limits of municipalities having a population of greater than twenty thousand and within the Pecos-Permian Basin Intrastate Air Quality Control Region, except for hydrogen sulfide ($\frac{1}{2}$ hour average).

0.003 ppm

4. Carbon Monoxide

a. 8 - hour average 8.7 ppm

b. 1 - hour average 13.1 ppm

5. Nitrogen Dioxide

a. 24 - hour average 0.10 ppm

b. Annual arithmetic average 0.05 ppm

6. Photochemical Oxidants (1-hour average) 0.06 ppm

7. Non-Methane Hydrocarbons (3-hour average) 0.19 ppm

D. On an annual average, the soiling index shall not exceed 0.4
cohs/1000 linear feet of air.

New Mexico Environmental Improvement Board
P. O. Box 968 - Crown Building
Santa Fe, New Mexico 87504-0968

AQCR 626

**AIR QUALITY CONTROL REGULATION 626 - PETROLEUM
PROCESSING FACILITIES - AMMONIA**
(Supersedes Air Quality Control Regulation 626, filed July 15, 1974)

No person owning or operating a petroleum processing facility shall permit, cause, suffer or allow ammonia emissions to the atmosphere in excess of 25 ppm by volume in the undiluted effluent gas stream or streams.

AQCR 627

**AIR QUALITY CONTROL REGULATION 627 - PETROLEUM PROCESSING
FACILITIES- SULFUR RECOVERY PLANT - HYDROGEN SULFIDE**
(Supersedes Air Quality Control Regulation 627,
filed July 15, 1974)

By January 1, 1976, no person owning or operating a petroleum processing facility or sulfur recovery plant, the feedstock of which is in whole or in part a product of petroleum processing shall permit, cause, suffer or allow hydrogen sulfide emissions to the atmosphere unless:

A. the stack emissions do not exceed 10 ppm by volume in the undiluted effluent gas stream or streams; or

B. the effluent gas stream containing hydrogen sulfide is passed through a device capable of oxidizing the hydrogen sulfide to sulfur dioxide.

AQCR 628

**AIR QUALITY CONTROL REGULATION 628 - PETROLEUM
PROCESSING FACILITY - SULFUR RECOVERY
PLANT - HYDROGEN SULFIDE ALARM SYSTEM**
(Supersedes Air Quality Control Regulations 628,
filed July 15, 1974)

No person owning or operating a petroleum processing facility or sulfur recovery plant commencing operation after January 1, 1975, shall flare gas containing more than 10 ppm of hydrogen sulfide without maintaining in good working order an alarm system connected to the flare which will signal non-combustion of the gas.



AQCR 702

AIR QUALITY CONTROL REGULATION 702 - PERMITS

* A. Any person constructing or modifying any new source of an air contaminant, which source, if it were uncontrolled, would result in an emission of the contaminant greater than ten pounds per hour or twenty-five tons per year or would result in the emission of a hazardous air pollutant, must obtain a permit from the department prior to the construction or modification. Applications for permits shall be filed not less than sixty days prior to the commencement of the construction or modification. The relocation of temporary installations is not subject to this section.

B. In the event of an emergency, upon oral or written request, the department may grant temporary permission to commence construction prior to the filing of an application for a permit. Confirmation of the permission shall be made in writing by the department. The permission shall expire within thirty days of the date of the written confirmation if the requestor has not filed an application for a permit in accordance with the provisions of Subsection D of this section. The permission shall be deemed revoked in the event that the application for a permit is denied.

C. If a source consists of more than one unit, a separate permit must be obtained for each unit which is not substantially interrelated with another unit. A common connection leading to ductwork, pollution control equipment or a single stack shall not, by itself, constitute a substantial interrelationship.

D. Any person seeking a permit shall do so by filing a written application with the director. Applications shall:

1. be made on forms furnished by the department;
2. state the applicant's name and address;
3. state the date of the application;
4. describe the nature and quantities of any air contaminants the completed construction or modification will emit;
5. be accomplished by:

(a) a map, such as the Topographic Quadrangle map published by the United States Department of the Interior Geological Survey or equivalent map, showing the exact location of the proposed construction or modification;

(b) a process flow sheet, including a material balance, of the processing and combustion plant;



(c) a description of the equipment to be used for air pollution control, including a process flow sheet, or, if the department so requires, layout and assembly drawings;

(d) a description of the equipment or methods to be used for emission measurement; and

(e) such information as the department may require relating to the environmental impact of the proposed source or modification if the department determines that the granting of the permit might constitute a major state action significantly affecting the quality of the human environment;

6. state the expected normal operating schedule of the completed construction or modification in terms of hours per day, days per week, weeks per month and months per year;

7. contain such other relevant information as the department may reasonably require; and

8. be signed by the applicant or his authorized representative.

E. Any records or other information furnished to the department relating to processing or production techniques unique to the applicant and considered to be confidential shall be clearly labeled as being confidential by the applicant and shall not be made a part of any public record unless the applicant expressly agrees to its publication.

F. For applications for the construction and modifications of new sources to be located within Bernalillo County, the department may seek the aid of the air quality control staff of the joint Albuquerque-Bernalillo County Air Quality Control Board.

G. The department shall:

1. make available for public inspection a list of all applications for permits;

2. allow all interested persons fifteen days from the date an application is filed to submit written comments on the application; and

3. mail written notice of the action taken on a permit application to those persons who submitted written comments on the application.

H. The department shall within thirty days after the filing of an application for a permit either grant the permit, grant the permit subject to conditions or deny the permit. If the department denies a permit or grants the permit subject to conditions, the department shall notify the applicant by certified mail of the action taken and the reasons therefor. If the department grants a permit, the department shall mail the permit to the applicant by certified mail.

I. The department may deny any application for a permit if:

1. it appears that the construction or modification will not meet applicable regulations;
2. the new source will emit a hazardous air pollutant or air contaminant in excess of a federal standard of performance or a state regulation;
3. it appears that the new source may result in any federal or state ambient air standard being exceeded;
4. any provision of the Air Quality Control Act will be violated; or
5. it appears that the construction of the new source will not be completed within a reasonable time.

J. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act and any applicable regulations of the board.

K. The department may impose any reasonable conditions upon a permit, including a schedule of construction and conditions requiring the source to be provided with:

1. sampling ports of a size, number and locations as the department may require;
2. safe access to each port;
3. instrumentation to monitor and record emission data; and
4. any other reasonable sampling and testing facilities.

L. The department may grant a conditional permit subject to the later filing of information required by the department relating to the environmental impact of a proposed source or modification if the department has otherwise determined that the source or modification will meet all applicable regulations and will not cause any state or federal ambient air standard to be exceeded. The department shall either grant or deny the permit finally within thirty days of the date the information is filed. The information shall be filed within such time as the conditional permit may require.

M. The department may cancel a permit if the construction is not commenced within one year from the date of issuance or, if during the construction, work is suspended for a total of one year.

N. Thirty days prior to the cancellation of a permit, the department shall notify the permittee by certified mail of the impending cancellation. The department shall notify the permittee by certified mail of the cancellation of his

permit and the reasons therefor. A permittee whose permit has been cancelled may request a hearing before the board. The request must be made in writing to the director within thirty days after notice of the department's action has been received by the permittee. Unless a timely request for hearing is made, the decision of the department shall be final.

O. If a timely request for hearing is made, the board shall hold a hearing within thirty days after receipt of the request. The department shall notify the permittee by certified mail of the date, time and place of the hearing. In the hearing the burden of proof shall be upon the permittee. The board may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action of the department.

P. Any owner or operator subject to this section shall notify the department in writing of the:

1. anticipated date of initial startup of a source not more than sixty days nor less than thirty days prior to the date; and
2. actual date of initial startup of a source within fifteen days after the startup date.

Q. Within sixty days after achieving the maximum production rate at which the new source will be operated but not later than one hundred eighty days after initial startup of the new source, the owner or operator of the new source shall conduct a performance test in accordance with methods and under operating conditions approved by the department and furnish the department a written report of the results of the test.

R. Upon application by any person or group of persons, the board may exempt from any or all of the requirements of this section any source or class of sources which the board finds will not unreasonably degrade the ambient air. Exceptions may be granted only at public meetings of the board. No exceptions may be granted for a source or class of sources if the source or any one of the sources within the class, if it were uncontrolled, would result in an emission of an air contaminant greater than twenty-five tons per year. Exceptions may apply statewide or regionally and may be revoked by the board at any public meeting.

S. This section does not apply to stationary sources, the construction or modification of which was commenced prior to August 31, 1972.

T. As used in this section:

1. "new source" means any stationary source, the construction or modification of which is commenced after the filing of a regulation applicable to the stationary source or after the filing of an ambient air standard applicable to the area where the stationary source is to be located;

2. "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air contaminant emitted by the stationary source or which results in the emission of any air contaminant not previously emitted;

3. "construction" means fabrication, erection or installation of an affected facility;

4. "hazardous air pollutant" means an air contaminant which has been classified as a "hazardous air pollutant" by the administrator of the national environmental protection agency; and

5. "stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant.

U. As used in Subsection M of this section, "commencement" means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a binding contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction. Otherwise as used in this section, "commencement" means that an owner or operator has undertaken a continuous program of construction.

New Mexico Environmental Improvement Board
P. O. Box 968 - Crown Building
Santa Fe, New Mexico 87504-0968

AQCR 705

AIR QUALITY CONTROL REGULATION - 705
SCHEDULES OF COMPLIANCE
(Supersedes Air Quality Control Regulation 705,
Adopted September 24, 1973)

* A. No person shall operate a stationary or mobile source of an air contaminant to which applies an Air Quality Control Regulation that imposes an emission limitation or other requirement upon the source on a specific date which occurs after January 1, 1974, and more than one year from the effective date of the regulation, unless the source is operating under a schedule of compliance adopted by the board pursuant to this section or unless the person operating the stationary or mobile source has certified to the board that the source is complying with the requirements of the regulation. As used in this section, "effective date" means thirty days after the filing of the adopted regulation, as provided in Section 12-12-13. F., NMSA, 1953, of the New Mexico Environmental Improvement Act.

B. Upon petition, the board may, pursuant to the requirement of Subsection A, adopt at any public meeting a schedule of compliance and exempt that schedule of compliance from the remaining requirements of this section if:

1. the petitioner has secured the federal Environmental Protection Agency's approval of the offered schedule of compliance or part thereof; and

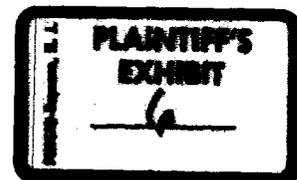
2. the petitioner, by complying with the provisions of the federally approved schedule of compliance, will meet the time and emission requirements of the applicable state regulations.

C. Any person seeking the board's approval of a schedule of compliance shall file a written petition with the direction by January 1, 1974, or within ninety days of the effective date of the regulation to be complied with, whichever is later. As used in this section, "effective date" means thirty days after the filing of the adopted regulation, as provided in Section 12-12-13.F., NMSA, 1953, of the New Mexico Environmental Improvement Act.

D. At a public meeting, pursuant to a written request, the board may extend the time period for the filing of a petition for a schedule of compliance.

E. Petitions shall:

1. state the petitioner's name and address;
2. state the date of the petition;



3. describe the facility for which a schedule of compliance is sought;
4. state the address or description of the property upon which the facility is located;
5. state the regulation and the applicable provisions of the regulations for which a schedule of compliance is sought;
6. include, to the extent practicable, the following increments of progress:
 - a. a date or dates by which contracts for each major phase of emission control systems or process modification, or orders for their components parts, will be awarded;
 - b. a date or dates of initiation of each major phase of onsite construction or installation of emission control equipment or process modification;
 - c. a date or dates by which each major phase of onsite construction or installation of emission control equipment or process modification is to be completed; and
 - d. a date or dates by which final compliance is to be achieved;
7. describe in detail the methods or devices to be used to achieve compliance with the applicable regulation; and
8. state why the petitioner believes the schedule of compliance should be approved.

F. The department shall make available for public inspection a copy of each petition at its central office in Santa Fe and at its field office which is located nearest to the source in the same air quality control region wherein the source is located.

G. The petitioner may submit with his petition any relevant documentation or material which the petitioner believes would support his petition.

H. The director, within ten days of receipt of a copy of the petition filed with the board, shall notify the petitioner by certified mail of the date, time and place of the public hearings on the petition for a schedule of compliance.

I. At least thirty days prior to the hearing date, the director shall publish notice of the date, time, place and subject matter of the hearing in a newspaper of general circulation in the county in which the facility is located and in a newspaper of general circulation in the state.

J. The director shall maintain a file of persons interested in schedule of compliance hearings and shall make a reasonable effort to notify those persons by mail of the date, time, place and subject matter of the hearing.

K. Public hearings shall be held by the board not more than sixty days from the date the director mails the notice of the hearing to the petitioner.

L. Public hearings shall be held in Santa Fe unless the department and the petitioner agree upon another site in the state.

M. The board may designate a hearing officer to take evidence at the hearing.

N. A record shall be made at each hearing, the cost of which shall be borne by the department. Transcript costs shall be paid by those persons requesting transcripts except that the department shall bear the cost of any transcript furnished to members of the board and the Environmental Protection Agency.

O. In schedule of compliance hearings, the technical rules of evidence and the rules of civil procedure shall not apply, but the hearings shall be conducted so that all relevant views are amply and fairly presented without undue repetition. The board may require reasonable substantiation of statements or records tendered and may require any view to be stated in writing when the circumstances justify.

P. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and shall allow reasonable cross-examination of witnesses testifying at the hearing.

Q. A petitioner may represent himself at the hearing or be represented by any other individual.

R. On the basis of the petition and the information developed at the public hearing, the board shall, within 60 days of receipt of the transcript, adopt a schedule of compliance. Schedules of compliance shall:

1. state the petitioner's name and address;
2. state the date of adoption of the schedule of compliance;
3. describe the facility to which the schedule of compliance applies;
4. identify all sources within the facility and all air contaminants emitted from the facility to which the schedule of compliance applies;
5. state the address or description of the property upon which the facility is located;

6. identify the regulatory provisions covered by the schedule of compliance;

7. state the increments of progress that must be followed by the petitioner to achieve compliance with the applicable regulations as expeditiously as practicable;

8. state any conditions which may apply to the schedule of compliance; and

9. state the board's reasons for the increments of progress and conditions imposed.

S. Any petitioner who has obtained a schedule of compliance from the board shall certify to the board, within five days after the deadline for each increment of progress, whether or not the required date has been met.

T. If it appears to the holder of an approved schedule of compliance that he will be unable to meet any increment of progress, he shall apply to the board for a modification of the schedule thirty days prior to the first increment date that will not be met. The application for modification shall state which dates will not be met and the reasons therefor. If the application does not request a modification of the final compliance date for meeting the applicable regulations, the board shall act upon the application at its next public meeting. If the application requests a modification of the final compliance date, the board shall hold a public hearing in accordance with Subsection G through P of this section and act upon the application on the basis of the information developed at the hearing.

New Mexico Environmental Improvement Board
P. O. Box 968 - Runnels Building
Santa Fe, New Mexico 87504-0968

AQCR 707

**AIR QUALITY CONTROL REGULATION 707 - PERMITS,
PREVENTION OF SIGNIFICANT DETERIORATION (PSD)**
(Supersedes Air Quality Control Regulation 707, filed February 14, 1984)

- A. Applicability
- B. Exemptions
- C. Source Obligation
- D. Source Information
- E. Control Technology Requirements
- F. Ambient Impact Requirements
- G. Additional Impact Analyses
- H. Ambient Air Quality Modeling
- I. Monitoring Requirements
- J. Stack Height Credit
- K. Temporary Source Exemptions
- L. Public Participation and Notification
- M. Restrictions on Area Classifications
- N. Exclusions from Increment Consumption
- O. Additional Requirements For Sources Impacting Federal Class I Areas
- P. Definitions



A. Applicability

Any person constructing any new major stationary source or major modification as defined in this regulation, that emits or will emit regulated pollutants in an attainment or unclassified area shall obtain a permit from the department in accordance with the requirements of this regulation prior to the construction or modification.

B. Exemptions

This regulation shall not apply to:

1. Each regulated pollutant emitted for which the area the source proposes to locate in is designated as nonattainment.

2. Sources or modifications that are part of a nonprofit health or nonprofit educational institution and are approved by the Board; or

3. A portable stationary source which has previously received a PSD permit; and

(a) The owner or operator proposes to relocate the source, and emissions of the source at the new location are temporary; and

(b) The emissions from the source would not exceed its allowable emission rate; and

(c) The owner or operator demonstrates that the emissions from the source would not impact any Class I area nor any area where an applicable increment is known to be violated; and

(d) Reasonable notice is given to the department prior to the relocation identifying the proposed new location and probable duration of operation at the new location. Such notice shall be given to the department not less than 15 days in advance of the proposed relocation unless a different time interval is previously approved by the department.

4. A source or modification that would be major only if fugitive emissions, to the extent they are quantifiable, are considered in calculating the potential to emit or net emissions increase, and the source does not belong to:

(a) Any category in Table 1; or

(b) Any other stationary source category which on or after August 7, 1980 is being regulated under section 111 or 112 of the Act.

C. Source Obligation

1. Any owner or operator who begins actual construction or operates a source or modification without, or not in accordance with, a permit issued under the requirements of this regulation shall be subject to enforcement action.

2. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, Sections 74-2-1 to 74-2-17, NMSA 1978, any applicable regulations of the Board, and any other requirements under local, state, or federal law.

3. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within 18 months of the projected and approved commencement date. The director may extend the 18-month period upon a satisfactory showing that an extension is justified.

4. If a source or modification becomes a major stationary source or modification solely due to a relaxation in any enforceable limitation which limitation was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this regulation shall apply to the source or modification as though construction had not yet commenced.

5. Any source or modification subject to this regulation shall comply with the provisions of Air Quality Control Regulation 702, Sections P. and Q.

6. Any source or modification subject to this regulation shall not be subject to the provisions of Air Quality Control Regulation 702 for the same regulated pollutant except as noted in C.5. Any new source or modification which emits a regulated pollutant in an amount such that this regulation does not apply shall be subject to Air Quality Control Regulation 702 for that pollutant.

7. In any case where a new source or modification is subject to more than one permit regulation, only one air quality permit shall be issued. In such a case, the permit shall not be issued until all the requirements of each applicable permit regulation have been met.

D. Source Information

The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this regulation. Information shall include, but is not limited to:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing the design and plant layout; and
2. A detailed schedule of construction of the source or modification; and
3. A detailed description of the planned system of continuous emission reduction for the source or modification, emission estimates, and other information necessary to determine that best available control technology will be applied.

4. Upon request by the department, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorologic and topographic data necessary to estimate such impact; and

(b) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977 in the area the source or modification would affect.

E. Control Technology Requirements

1. A new major stationary source shall apply best available control technology for each regulated pollutant that it would have the potential to emit in amounts equal to or greater than the significance levels as listed in Table 2. This requirement applies to each proposed emissions unit or operation that will emit such pollutant.

2. A major modification shall apply best available control technology for each regulated pollutant which would result at the source in a significant net emissions increase as defined in this regulation. This requirement applies to each proposed emissions unit or operation where a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

3. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

4. The department may approve a system of innovative control technology for the source or modification if:

(a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function; and

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under best available control technology by a date specified by the department. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance; and

(c) The source or modification would meet the requirements of this section and Section F of this regulation based on the emission rate that the system of innovative control technology would be required to meet on the date specified by the department; and

(d) The source or modification would not during the interim period of achieving the permitted emission level:

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(i) Cause or contribute to a violation of an applicable national ambient air quality standard; nor

(ii) Impact any Class I area; nor

(iii) Impact any area where an applicable increment is known to be violated; and

(e) All other applicable requirements including those for public participation have been met.

5. The department shall withdraw any approval to employ a system of innovative control technology if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

6. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph E.5., the department may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

7. If the owner or operator of a major stationary source or major modification previously issued a permit under this regulation applies for an extension as provided for under C.3, and the new proposed date of construction is greater than 18 months from the date the permit would become invalid, the determination of best available control technology shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

F. Ambient Impact Requirements

1. The requirements of this section shall apply to each pollutant emitted by a new major stationary source or major modification in amounts equal to or greater than those in Table 2.

2. The allowable emission increases from the proposed source or modification, including secondary emissions, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(a) Any national or New Mexico air quality standard in any location; or

(b) Any applicable maximum allowable increase as shown in Table 4 over the baseline concentrations in any area.

3. The owner or operator of the proposed source or modification shall demonstrate that neither F.2.a) nor F.2.b) will occur.

G. Additional Impact Requirements

1. The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value. The analysis can utilize data or information available from the department.

2. The owner or operator shall also provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

H. Ambient Air Quality Modeling

All estimates of ambient concentrations required by this regulation shall be based on applicable air quality models, data bases, and other requirements as specified in EPA's Guideline on Air Quality Models, or any superseding EPA document, and approved by the department. Where an air quality impact model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Any substitution or modification of a model must be approved by the department, and notice shall be given by the department of such a substitution or modification and the opportunity for public comment provided for in fulfilling the public notice requirements in subsection L.2. of this regulation. The department will seek EPA approval of such substitutions or modifications.

L. Monitoring Requirements

1. Any application for a permit under this regulation shall contain an analysis of ambient air quality as measured by the applicant or available from a government agency in the area affected by the major stationary source or major modification for each of the following:

(a) For a major stationary source, each pollutant that it would have the potential to emit in an amount equal to or greater than the significance levels as listed in Table 2; or

(b) For a major modification, each pollutant that would result in a significant net emission increase;

2. If no National Ambient Air Quality Standard (NAAQS) for a pollutant exists, and there is an acceptable method for monitoring that pollutant, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant.

3. Continuous air quality monitoring data shall be required for all pollutants for which a National Ambient Air Quality Standard exists. Such data shall be submitted to the department for at least the one year period prior to receipt of the permit application. The department has the discretion to:

(a) Determine a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year but not less than four months; or

(b) Determine that existing air quality monitoring data is representative of air quality in the affected area and accept such data in lieu of additional monitoring by the applicant.

4. Ozone monitoring shall be performed if monitoring data is required for non-methane hydrocarbons. Post construction ozone monitoring data may be submitted in lieu of providing preconstruction data as required under I.3. if the owner or operator of the proposed major source or major modification satisfies all the provisions of 40 C.F.R. Part 51, Appendix S, Section IV.

5. The department may require monitoring of visibility in any Class I area where the department determines an adverse impact on visibility may occur due primarily to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the department and subject to the following:

(a) Visibility monitoring methods specified by the department shall be reasonably available and not require any research and development; and

(b) The cost of visibility monitoring required by the department shall not exceed 50% of the cost of ambient monitoring required by this regulation. If ambient monitoring is not required, the cost shall be estimated as if it were required for each pollutant for which this regulation applies.

(c) Both preconstruction and post construction visibility monitoring may be required. In each case, the duration of such monitoring shall not exceed one year.

6. The owner or operator of a major source or major modification shall conduct post construction ambient monitoring as the department determines is necessary to validate attainment of ambient air quality standards and to assure that increments are not exceeded.

7. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of this section .

8. The department has the discretion to exempt a stationary source or modification from the requirements of this section with respect to monitoring for a particular pollutant if the emissions of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, increases in ambient concentrations less than the levels listed in Table 3.

9. The department shall exempt a stationary source or modification from the requirements of this section with respect to preconstruction monitoring for a particular pollutant if:

- (a) For ozone, non-methane hydrocarbon emissions are less than 100 tons per year; or
- (b) The air pollutant is not a regulated pollutant; or
- (c) The existing ambient concentrations of the pollutant in the area affected by the source or modification are less than the concentrations listed in Table 3.

J. Stack Height Credit

The emission limitation required under this regulation shall not be relaxed by use of a stack height greater than that defined as good engineering practice or any other dispersion technique. This section shall not apply to stack heights or dispersion techniques in existence before December 31, 1970, or as otherwise allowed under previous good engineering practice determinations.

K. Temporary Source Exemptions

The requirements of Sections G and I of this regulation shall not apply to a temporary source subject to this regulation for a given pollutant if the allowable emissions of such pollutant would not impact any Class I area or any areas where an applicable increment is violated and would be temporary.

L. Public Participation and Notification

1. The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date an application is ruled complete shall be the date on which the department receives all required information.

2. Within 120 days, or within 180 days if a public hearing is held, after receipt of a complete application the reviewing authority shall:

(a) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(b) Make available at the department district and local office nearest to the proposed source a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(c) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. The public comment period shall be for thirty days from the date of such advertisement.

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(d) Send a copy of the notice of public comment to the applicant, the Administrator and to officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located, any comprehensive regional land use planning agency, and any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(e) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source and other appropriate considerations.

(f) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the source.

(g) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(h) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the source.

M. Restrictions on Area Classifications

1. The following areas which were in existence on August 7, 1977, shall be mandatory Class I areas and may not be redesignated:

- (a) National wilderness areas which exceed 5,000 acres in size; or
- (b) National parks which exceed 6,000 acres in size.

2. The following areas may be redesignated only as Class I or II;

(a) An area which exceeds 10,000 acres in size and is a national monument, national primitive area, national preserve, national recreational area, national wild and scenic river, national wildlife refuge; or

(b) A national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.

N. Exclusions From Increment Consumption

Following a public hearing, the Board may exclude the following concentrations in determining compliance with a maximum allowable increase:

1. Concentrations due to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy

Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order. This exclusion shall not apply more than five years after the effective date of such an order; or

2. Concentrations due to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan. This exclusion shall not apply more than five years after the effective date of such a plan; or

3. Concentrations of particulate matter due to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; or

4. The increase in concentrations due to new sources outside the United States over the concentrations attributed to existing sources which are included in the baseline concentrations.

O. Additional Requirements For Sources Impacting Federal Class I Areas

1. The department shall transmit to the Administrator and the Federal Land Manager a copy of each permit application relating to a major stationary source or major modification proposing to locate within 100 kilometers of any Federal Class I area within thirty days of the receipt of the application and sixty days prior to any public hearing on the application. The department shall include all relevant information to the permit application. Relevant information shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The department shall consult with all affected Federal Land Managers as to the completeness of the permit application and shall consider any analysis performed by the Federal Land Manager concerning the impact of the proposed major stationary source or major modification on air quality related values, including visibility, if such analysis is received within thirty (30) days after the Federal Land Manager receives a copy of the complete application. Additionally, the department shall notify any affected Federal Land Manager within thirty days (30) from the date the department receives a request for a pre-application meeting from a proposed source subject to this regulation. Notice shall be provided to the Administrator and Federal Land Manager of every action related to the consideration of such permit. The department shall also provide the Federal Land Manager and the Administrator with a copy of the preliminary determination required under Section L and shall make available to them any materials used in making that determination. In any case where the department disagrees with the Federal Land Manager's analysis of source impact on air quality related values, the department shall, either explain its decision or give notice to the Federal Land Manager as to where the explanation can be obtained. In the case where the department disagrees with the Federal Land Managers' analysis, the department will also explain its decision or give notice to the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed as to where the decision can be obtained.

2. The department shall transmit to air quality control agencies of neighboring states and Indian governing bodies a copy of each permit application

having the potential to effect Class I areas or increment consumption in areas under their jurisdiction. The department shall also provide the affected air quality control agencies and Indian governing bodies with a copy of the preliminary determination required under Section L and shall make available to them any materials used in making that determination. The department shall include a provision for a sixty-day comment period for the Federal Land Managers before any public hearing on a permit application is held.

3. The Federal Land Managers may demonstrate to the department that the emissions from a proposed source or modification would have an adverse impact on the air quality related values, including visibility, of any Class I lands under their jurisdiction, even though the change in air quality resulting from emissions from the proposed source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the department concurs with this demonstration, then a permit shall not be issued.

4. Class I Waivers. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from a proposed source or modification would have no adverse impact on the air quality related values, including visibility, of Class I lands under his jurisdiction, even though the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and so certifies to the Department, the Department may grant a waiver from such maximum allowable increases. Emission limitations must be included as necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the maximum allowable increases over baseline concentrations shown in Table 5.

5. For the case where the Federal Land Manager does not perform an impact analysis with respect to visibility impairment in a Class I area, the department may perform such an analysis. The department shall not issue a permit if it determines that an adverse impact on visibility would occur primarily due to the operation of the proposed source or modification.

6. Sulfur Dioxide Waiver by Governor. The owner or operator of a proposed major stationary source or major modification which cannot be approved under subsection 0.4. may demonstrate to the Governor that the source cannot be constructed by reason of an exceedance of a maximum allowable increase for a Class I area for sulfur dioxide for a period of twenty-four hours or less. The owner or operator may also demonstrate that a waiver from this requirement would not adversely effect the air quality related values of the Class I area. The Governor, after consideration of the Federal Land Manager's recommendation and subject to his concurrence, may, after notice and public hearing, grant a waiver from such maximum allowable increase. If the waiver is granted, the department shall issue a permit to the source or modification. Any source or modification that obtains a permit under this section shall comply with sulfur dioxide emissions limitations that do not allow increases of ambient concentrations above the baseline concentration to exceed the levels found in Table 6 for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period.

7. Sulfur Dioxide Waiver by Governor with the President's Concurrence. In any case where the Governor recommends a waiver in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President through the office of the Governor. If the President so directs, the department shall issue the permit. Any source or modification that obtains a permit under this section shall comply with sulfur dioxide emissions limitations that do not allow increases in ambient concentrations above the baseline concentration to exceed the levels found in Table 6 for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period.

P. Definitions

As used in this regulation:

1. "Act" means, the Federal Clean Air Act, 42 U. S. C. Sections 7401 through 7642;

2. "Actual emissions" means, the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with the criteria as follows:

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period;

(b) The director may determine that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit;

(c) For any emissions unit which has not begun normal operation on the particular date, actual emissions shall equal the potential to emit of the unit on that date;

3. "Administrator" means, the regional administrator of the U. S. Environmental Protection Agency;

4. "Adverse Impact on Visibility" means, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with:

(a) Times of visitor use of the Federal Class I area; and

(b) The frequency and timing of natural conditions that reduce visibility.

This term does not include effects on integral vistas as defined at 40 CFR 51.301

Definitions:

5. "Allowable emissions" means, the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- (a) The applicable standards as set forth in 40 CFR Parts 60 and 61;
- (b) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or
- (c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date;

6. "Attainment area" means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any national ambient air quality standard for such pollutant, and is so designated under section 107 (d) (1) (D) or (E) of the Act;

7. "Baseline area" means, all lands designated as attainment or unclassifiable under Section 107 (d) (1) (D) or (E) of the Act within each federal air quality control region in the State of New Mexico in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m³ (annual average) of the pollutant for which the baseline date is established;

8. "Baseline concentration" means, that adjusted ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

- (a) The actual emissions representative of sources in existence on the applicable baseline date except as provided in 8. (c) of this section;
- (b) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date;
- (c) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):
 - (i) Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and
 - (ii) Actual emission increases and decreases at any stationary source occurring after the applicable baseline date;

9. "Baseline date" means, the earliest date after August 7, 1977 that:

- (a) A major stationary source or major modification subject to 40 CFR 52.21 submits a complete application under that section; or

(b) A major stationary source or major modification subject to this regulation submits a complete application; or

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107 (d) (1) (D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under this regulation; and

(ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification there would be a significant net emissions increase of the pollutant;

10. "Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change;

11. "Best available control technology" (BACT) means, an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to this regulation which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutants. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61 or any New Mexico Air Quality Control Regulation. If the director determines that technology or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results;

12. "Building, structure, facility, or installation" means, all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively);

13. "Construction" means, any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions;

14. "Commence" means, that an owner or operator has all necessary preconstruction approvals or permits and has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Has entered into a binding contractual obligation, which cannot be cancelled or changed without substantial loss, to undertake and complete, within a reasonable time, a continuous program of construction.

15. "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application;

16. "Emissions unit" means, any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act;

17. "Federal Class I area" means any Federal land that is classified or reclassified "Class I".

18. "Federal Land Manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands;

19. "Federally enforceable" means, all limitations and conditions which are enforceable by the Administrator and the director, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 and 40 CFR 51.24;

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

21. "Good Engineering Practice" means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles. Such height shall be calculated in accordance with the provisions of 40 CFR 51.1;

22. "High terrain" means, any area having an elevation 900 feet or more above the base of the stack of a source;

23. "Indian Governing Body" means, the governing body of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government;

24. "Innovative Control Technology" means, any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts;

25. "Low terrain" means, any area other than high terrain;

26. "Major modification" means, any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair, and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(i) The source was capable of accomodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(ii) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.24;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24;

(g) Any change in ownership at a stationary source;

27. "Major stationary source" means:

(a) Any stationary source listed in Table 1 which emits or has the potential to emit emissions equal to or greater than 100 tons per year of any regulated pollutant;

(b) Any stationary source not listed in Table 1 and which emits or has the potential to emit 250 tons per year or more of any regulated pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under 27. a.) or b.) of this section if the change would constitute a major stationary source by itself;

(d) Any major stationary source or modification to an existing stationary source that is major for volatile organic compounds shall be considered major for ozone;

28. "Mandatory Class I Federal area" means any area identified in the Code of Federal Regulations, Title 40, Part 81, Subpart D.

29. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

30. "Net emissions increase" means,

(a) the amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs;

(b) An increase or decrease in actual emissions is creditable only if either the Department or the Administrator has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs;

(c) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available;

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same effect on ambient air quality or health and welfare as that attributed to the increase from the particular change;

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days;

31. "Nonattainment area" means, an area which has been designated under section 107 of the Federal Clean Air Act as nonattainment for one or more of the National Ambient Air Quality Standards by the U. S. Environmental Protection Agency;

32. "Portable stationary source" means, a source which can be relocated to another operating site with limited dismantling and reassembly;

33. "Potential to emit" means, the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant 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 design if the limitations or the effect it would have on emissions is federally enforceable. The provisions of this section do not apply to secondary emissions;

34. "Regulated Pollutant" means, any air pollutant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the Federal Clean Air Act;

35. "Secondary emissions" means, emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specified, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification;

36. "Significant" means, in reference to a net emissions increase or the potential of a source to emit air pollutants, a rate of emission that would equal or exceed any of the rates listed in Table 2;

37. "Stationary source" means, any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act;

38. "Temporary Source" means, a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations;

39. "Visibility impairment" means, any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

TABLE 1 PSD SOURCE CATEGORIES

-
1. Fossil Fuel-fired steam electric plants of more than 250 million BTU/hr heat input
 2. Coal cleaning plants (with thermal dryers)
 3. Kraft pulp mills
 4. Portland cement plants
 5. Primary zinc smelters
 6. Iron and steel mill plants
 7. Primary aluminum ore reduction plants
 8. Primary copper smelter
 9. Municipal incinerators capable of charging more than 250 tons of refuse per day
 10. Hydrofluoric acid plants
 11. Sulfuric acid plants
 12. Nitric acid plants
 13. Petroleum refineries
 14. Lime plants
 15. Phosphate rock processing plants
 16. Coke oven batteries
 19. Primary lead smelters
 20. Fuel conversion plants
 21. Sintering plants
 22. Secondary metal production plants
 23. Chemical process plants
 24. Fossil fuel boiler (or combinations thereof) totaling more than 250 million BTU/hr heat input
 25. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
 26. Taconite ore processing plants
 27. Glass Fiber processing plants
 28. Charcoal production plants
-

TABLE 2. SIGNIFICANT EMISSION RATES

POLLUTANT	EMISSION RATE (TONS/YR)
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate matter	25
Ozone (NMHC ^a)	40 (NMHC)
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Mercury	0.1
Vinyl chloride	1
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H ₂ S)	10
Total reduced sulfur (incl. H ₂ S)	10
Reduced sulfur compounds (incl. H ₂ S)	10
Any other pollutant regulated under the Clean Air Act	Any emission rate
Each regulated pollutant	Emission rate or net emissions increase that causes an air quality impact of 1 ug/m ³ or greater (24-hour basis) in any Class I area located within 10 km of the source.

^a Non methane Hydrocarbons

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TABLE 3. SIGNIFICANT MONITORING CONCENTRATIONS

POLLUTANT	AIR QUALITY CONCENTRATION IN MICROGRAMS PER CUBIC METER AND AVERAGING TIME
Carbon monoxide	575 (8-hour)
Nitrogen dioxide	14 (Annual)
Sulfur Dioxide	13 (24-hour)
Total suspended particulates	10 (24-hour)
Ozone	a
Lead	0.1 (3-month)
Asbestos	b
Beryllium	0.0005 (24-hour)
Mercury	0.25 (24 hour)
Vinyl Chloride	15 (24-hour)
Fluorides	0.25 (24-hour)
Sulfuric acid mist	b
Total reduced sulfur (incl. H ₂ S)	c
Reduced sulfur (incl. H ₂ S)	c
Hydrogen sulfide	0.20 (1-hour)

a No specific air quality concentration for ozone is prescribed. Exemptions are granted when a source's NMHC emissions are less than 100 tons/year.

b No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.

c No acceptable monitoring techniques available at this time. However, techniques are expected to be available soon.

TABLE 4. ALLOWABLE PSD INCREMENTS
(Micrograms per cubic meter)

	Class I	Class II	Class III
<u>Sulfur Dioxide</u>			
annual arithmetic mean	2	20	40
24-hour maximum	5 ^a	91 ^a	182 ^a
3-hour maximum	25 ^a	512 ^a	700 ^a
<u>Total Suspended Particulate Matter</u>			
annual geometric mean	5	19	37
24-hour maximum	10 ^a	37 ^a	75 ^a

^a Not to be exceeded more than once a year.

TABLE 5. MAXIMUM ALLOWABLE RATE INCREASES, SULFUR
DIOXIDE AND PARTICULATE, CLASS I WAIVER

	MAXIMUM ALLOWABLE INCREASE (MICROGRAMS PER CUBIC METER)

Particulate Matter	
Annual geometric mean	19
24-hr. maximum	37
Sulfur Dioxide	
Annual arithmetic mean	20
24-hr. maximum	91
3-hr. maximum	325

TABLE 6. MAXIMUM ALLOWABLE INCREASE, SULFUR DIOXIDE,
CLASS I WAIVER
(MICROGRAMS PER CUBIC METER)

Period of Exposure	Terrain areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221