

**TITLE 20. ENVIRONMENTAL PROTECTION
CHAPTER 2. AIR QUALITY (STATEWIDE)
PART 100. GREENHOUSE GAS REDUCTION PROGRAM**

§ 20.2.100.1. ISSUING AGENCY

Environmental Improvement Board.

§ 20.2.100.2. SCOPE

All persons who own, operate or control a GHG source, as defined in this Part.

§ 20.2.100.3. STATUTORY AUTHORITY

Environmental Improvement Act, NMSA 1978, §§ 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, §§ 74-2-1 *et seq.*, including §§ 74-2-5(A) and (B).

§ 20.2.100.4. DURATION

Permanent.

§ 20.2.100.5. EFFECTIVE DATE

_____, 2010.

§ 20.2.100.6. OBJECTIVE

The objective of this Part is to establish greenhouse gas emission reduction requirements for GHG sources, as defined herein.

§ 20.2.100.7. DEFINITIONS

In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part the following definitions shall apply; provided, however, that in the event of a conflict, the definition provided in this Part shall prevail for purposes of this Part.

A. "baseline GHG emissions" means the actual or estimated carbon dioxide (CO2) and methane (CH4) emissions from a GHG source in 2010, calculated in terms of CO2e, as approved by the department. For new GHG sources, it is the 2012 emissions limitations set forth in §20.2.100.10 times the output during the first year of regulation of the new GHG source, as approved by the department.

B. "board" means the Environmental Improvement Board.

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2 C. "CO₂e" means carbon-dioxide equivalent, which is the global warming potential
3 of a gas calculated in terms of metric tons of carbon dioxide, as provided in 40 CFR 98.6.
4

5
6 D. "credit" means the CO₂e amount of a reduction of GHG emissions from a GHG
7 source beginning in 2012 in excess of that required by these regulations that has been reviewed
8 and approved by the department.
9

10 E. "department" means the New Mexico Environment Department.
11

12 F. "early action" means specific, measured, enforceable, permanent and verifiable
13 steps voluntarily taken at a GHG source at any time in 2005 through 2011 that reduced the
14 source's GHG emissions below that which it would have emitted had such steps not been taken.
15

16 G. "early action credit" means the CO₂e amount of a reduction in GHG emissions
17 from early action.
18

19 H. "existing GHG source" means a GHG source whose GHG emissions in 2010
20 equaled or exceeded the threshold amount.
21

22 I. "greenhouse gas" means a gas with a global warming potential.
23

24 J. "GHG" means CO₂ and CH₄.
25

26 K. "GHG price" shall be \$50.00 per metric ton (mton) CO₂e in 2012, which dollar
27 amount shall increase by \$1.00 every year thereafter. For example, in 2013, the GHG price shall
28 be \$51.00.
29

30 L. "GHG source" or "source" means a structure, building, equipment, facility,
31 installation or operation located in New Mexico and under the same ownership, operation or
32 control, as determined by the department, whose emissions of CO₂ and CH₄ equal or exceed the
33 threshold amount; provided, however, that "GHG source" shall only include those sources that
34 are in the business of (1) generating electricity or (2) producing, processing or refining oil or
35 natural gas.
36

37 M. "new GHG source" means a source whose GHG emissions equal or exceed the
38 threshold amount after 2010, but not during 2010.
39

40 N. "offset" means a CO₂e reduction in emissions in New Mexico that is not required
41 by these regulations. An offset must be approved and determined by the department to be
42 accurately measured, verifiable, enforceable, voluntary, additional and permanent.
43

44 O. "threshold amount" means GHG emissions (CO₂ and CH₄) of 25,000 mtons per
45 year CO₂e.
46

1 **§ 20.2.100.8. PREAMBLE**

2
3 Human activity has increased the global concentration of greenhouse gases in the atmosphere.
4 Science informs us that these increased concentrations have and will warm the climate globally
5 and that, unless abated, will have significant, adverse impacts to the health and welfare of New
6 Mexicans. Currently, scientists believe that greenhouse gas emission reductions to 25% below
7 1990 levels by 2020, and 80% below 1990 levels by 2050, or more, are needed to avoid the most
8 severe of these adverse impacts. These regulations are intended to reduce greenhouse gas
9 emissions in New Mexico in a manner consistent with this scientific view, and in proportion to
10 New Mexico’s contribution to global warming. Although the science underlying the connection
11 between anthropogenic greenhouse gas emissions and climate change is well-established, the
12 global climate system is complex, and science’s ability to predict future impacts and recommend
13 avoidance strategies has and will evolve and improve over time. Accordingly, these regulations
14 should be reviewed in 2014, and thereafter as necessary, to assure they remain consistent with
15 the most current scientific knowledge and understanding.

16
17 **§ 20.2.100.9. EXISTING GHG SOURCES**

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19 A. On or before December 31, 2011, existing GHG sources shall accurately report
20 their baseline GHG emissions to the department. The report shall include a detailed description
21 of the source, quantities of all GHG emissions from the source, and a description of how the
22 2010 emissions were measured or estimated for the source. Emission monitoring and calculation
23 methods provided in 40 CFR Part 98 may be used to meet this requirement. The department
24 shall approve or disapprove the source’s baseline GHG emissions. In the event of disapproval,
25 the GHG source may correct the report or appeal the department’s decision to the board.

26
27 B. Unless otherwise provided in this Part, an existing GHG source shall emit no
28 more than its approved baseline GHG emissions in 2012, and thereafter it shall reduce those
29 emissions by at least three percent (3%) each year. For example, in 2013 an existing GHG source
30 shall emit no more than 97% of its approved baseline emissions, and in 2014 no more than 94%
31 of its approved baseline emissions.

32
33 C. Beginning in 2013, existing GHG sources shall accurately report the CO₂e of
34 their annual GHG emissions for the prior year to the department, on or before March 1. The
35 report shall include a detailed description of the GHG source, quantities of all GHG emissions
36 from the source, and a description of how the annual emissions were measured or estimated for
37 the source. The department shall approve or disapprove the CO₂e of the source’s annual GHG
38 emissions. In the event of disapproval, the source may appeal the department’s decision to the
39 board.

40
41 **§ 20.2.100.10. NEW GHG SOURCES**

42
43 A. New GHG sources that generate electricity shall emit no more than 0.5 mtons
44 CO₂e per MWh in 2012, which shall be reduced by three percent (3%) each year thereafter.

1 B. New GHG sources related to the production of oil shall emit no more than 0.015
2 mtons CO₂e per bbl in 2012, which shall be reduced by three percent (3%) each year thereafter.

3
4 C. New GHG sources related to the refining of oil shall emit no more than 0.027
5 mtons CO₂e per bbl in 2012, which shall be reduced by three percent (3%) each year thereafter.

6
7 D. New GHG sources related to the production of gas shall emit no more than 0.0047
8 mtons CO₂e per mcf in 2012, which shall be reduced by three percent (3%) each year thereafter.

9
10 E. New GHG sources related to the processing of gas shall emit no more than 0.0052
11 mtons CO₂e per bbl in 2012, which shall be reduced by three percent (3%) each year thereafter.

12
13 **§ 20.2.100.11. CREDITS, OFFSETS, BANKING AND BORROWING**

14
15 A. Credits. Any person may apply to the department for approval of a credit. A
16 person with an approved credit may use it to comply with this Part as to any GHG source that is
17 owned, operated or controlled by the same person.

18
19 B. Early action credits. Any person may apply to the department for an early action
20 credit. A person with an approved early action credit may use it to comply with this Part as to
21 any GHG source that is owned, operated or controlled by the same person. The amount of an
22 approved early action credit at a source during the first twelve months after the early action was
23 completed shall be added to that source's baseline GHG emissions.

24
25 C. Offsets. Any person may apply to the department for an offset. As applicable, the
26 department may require execution of an enforceable contract between the person, the department
27 and the owner of the offsetting source. A person with an approved offset may use it to comply
28 with this Part as to any source that is owned, operated or controlled by the same person.

29
30 D. Banking. Approved credits, early action credits and offsets may be held
31 indefinitely until they are submitted to the department for the purpose of lowering a source's
32 GHG reduction requirement for a given year on a one-to-one basis.

33
34 E. Borrowing. A GHG source that for any reason cannot meet its GHG reduction
35 requirement in a given year may defer meeting all or part of such requirement for one additional
36 year; provided, however, that the source shall meet the next year's GHG reduction requirement
37 plus one hundred and ten percent (110%) of the quantity of emissions deferred from the previous
38 year.

39
40 **§ 20.2.100.12. MAXIMUM EXPENDITURE**

41
42 Notwithstanding any other provision of this Part, a source shall have no further obligation to
43 meet its GHG reduction requirement in a given year if it has demonstrated to the department that:
44 (1) a good faith effort was made to reasonably and effectively either reduce GHG emissions at
45 the GHG source or obtain offsets; and (2) the amount of direct expenditures on such good faith

1 effort equals or exceeds the GHG price times three percent (3%) of the source's baseline GHG
2 emissions.

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4 **§ 20.2.100.13. NON-COMPLIANCE**

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6 Failure to comply with the GHG emission limitations established by this Part shall be subject to a
7 penalty and/or other enforcement action as determined by the Secretary.

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9 **§ 20.2.100.14. VARIANCES**

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11 Any person may seek a variance from this Part pursuant to NMAC §20.2.1.114.

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13 **§ 20.2.100.15. SUNSET**

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15 This Part shall no longer apply beginning in the year that sources begin reducing greenhouse gas
16 emissions pursuant to a mandatory regional or national greenhouse gas reduction program.

17
18 **§ 20.2.100.16. REVISIONS**

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20 On or before July 1, 2014, the department shall petition the board to amend these regulations to
21 modify the definitions of source, threshold and GHG, change the GHG reduction requirements to
22 compensate for emissions from new GHG sources, or make other changes as necessary to assure
23 that New Mexico is reducing its greenhouse gas emissions in a manner that is consistent with the
24 best available information and advice from climate change scientists.