Adopted Rules

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.42 NMAC, Sections 7 and 12, effective 5/13/13.

20.11.42.7 DEFINITIONS: In addition to the definitions in 20.11.42.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.42 NMAC shall govern.

A. "Acid rain source" has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV.

B. "Affected programs" means the state of New Mexico and Indian tribes and pueblos that are within 50 miles of the source.

C. "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter, which is emitted into or otherwise, enters the ambient air. Such term includes any precursors to the formation of any air pollutant; to the extent the administrator has identified such precursor or precursors for the purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N_2), oxygen (O_2) and ethane.

D. "Air pollution control equipment" means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

E. "Applicable requirement" means all of the following, as they apply to emissions units at a 20.11.42 NMAC source (including requirements that have been promulgated or approved by the board or EPA through rulemaking at the time of permit issuance but have future-effective compliance dates):

(1) any standard or other requirement provided for in the New Mexico state implementation plan approved by EPA, or promulgated by EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52;

(2) any term or condition of any pre-construction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent;

(3) any standard or other requirement under Section 111 of the federal act, including Section 111(d);

(4) any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act;

(5) any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder;

(6) any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act;

(7) any standard or other requirement under Section 126(a)(1) and (c) of the federal act;

(8) any standard or other requirement governing solid waste incineration under Section 129 of the federal act;

(9) any standard or other requirement for consumer and commercial products, under Section 183(e) of the federal act;

(10) any standard or other requirement for tank vessels under Section 183(f) of the federal act;

(11) any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the federal act;

(12) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit;

(13) any national ambient air quality standard, or any increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act; and

(14) any regulation adopted by the board in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-5.B NMSA 1978.

F. "Department" means the Albuquerque environmental health department or its successor agency or authority, as represented by the department director or his or her designee.

G. "Draft permit" means a version of a permit, for which the department offers for public participation under Subsection B of 20.11.42.13 NMAC or affected program review under Subsection C of 20.11.42.13 NMAC.

H. "Emission limitation" means a requirement established by EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

I. "Emissions allowable under the permit" means:

(1) any federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emission limit (including a work practice standard); or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

J. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

K. "Federal act" means the federal Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.

L. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

M. "Final permit" means the version of an operating permit issued by the department that has met all review requirements of Section 20.11.42.13 NMAC.

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

O. "General permit" means an operating permit that meets the requirements of Subsection D of 20.11.42.12 NMAC.

P. "Greenhouse gases" or "GHGs" means the air pollutant defined in § 86.1818–12(a) of Chapter I of Title

40 of the CFR, as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Q. "Hazardous air pollutant" means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

R. "Insignificant activities" means those activities listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

S. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the *standard industrial classification manual, 1987*, and that is described in paragraphs (1), (2), or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as:

(a) for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the federal act, 25 tons per year or more of any combination of such hazardous air pollutants, or such lesser quantity as the administrator may establish by rule; notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) for radionuclides, "major source" shall have the meaning specified by the administrator by rule.

(2) A major stationary source of air pollutants, as defined in Section 302 of the act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the act, unless the source belongs to one of the following categories of stationary sources:

(a) coal cleaning plants (with thermal dryers);

(b) kraft pulp mills;

(c) portland cement plants;

(d) primary zinc smelters;

(e) iron and steel mills;

(f) primary aluminum ore reduction plants;

(g) primary copper smelters;

(h) municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) hydrofluoric, sulfuric, or nitric acid plants;

(j) petroleum refineries;

(k) lime plants;

(l) phosphate rock processing plants;

(m) coke oven batteries;

(n) sulfur recovery plants;

(o) carbon black plants (furnace process);

(p) primary lead smelters;

(q) fuel conversion plant;

(r) sintering plants;

(s) secondary metal production plants;

(t) chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) taconite ore processing plants;

(x) glass fiber processing plants;

(y) charcoal production plants;

(z) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(aa) any other stationary source category, which as of August 7, 1980, is being regulated under Section 111 or 112 of the federal act.

(3) A major stationary source as defined in Part D of Title I of the federal act, including:

(a) for ozone non-attainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate", 50 tons per year or more in areas classified as "serious", 25 tons per year or more in areas classified as "severe", and 10 tons per year or more in areas classified as "extreme"; except that the references in Paragraph (3) of Subsection S of 20.11.42.7 NMAC to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(c) for carbon monoxide non-attainment areas:

(i) that are classified as "serious"; and

(ii) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide; and

(d) for particulate matter (PM_{10}) non-attainment areas classified as "serious", sources with the potential to emit 70 tons per year or more of PM_{10}.

T. "Operating permit" or "permit" means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to 20.11.42 NMAC.

U. "Operator" means the person(s) responsible for the overall operation of a facility.

V. "Owner" means the person(s) who owns a facility or part of a facility.

W. "Permit modification" means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in Subsection E of 20.11.42.13 NMAC.

X. "Permittee" means the owner, operator or responsible official at a permitted 20.11.42 NMAC source, as identified in any permit application or modification.

Y. "Person" includes any individual, partnership, corporation, association, state or political subdivision of a state, and any agency, department or instrumentality of the United States, and any of their officers, agents or employees.

Z. "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

AA. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with Subsection C of 20.11.42.13 NMAC.

BB. "Regulated air pollutant" means the following:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act;

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including:

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act, any pollutant for which a subject source would be a major source shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement; or

(6) any other pollutant "subject to regulation" as defined in Subsection II of 20.11.42.7 NMAC.

CC. "Renewal" means the process by which a permit is reissued at the end of its term.

DD. "Responsible official" means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(b) the delegation of authority to such representatives is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of 20.11.42 NMAC, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

(4) For an acid rain source:

(a) the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned; and

(b) the designated representative for any other purposes under 40 CFR, Part 70.

EE. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

FF. "Shutdown" means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose.

GG. "Startup" means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

HH. "Stationary source" or "source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

II. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "Greenhouse gases" (GHGs), shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO_2 equivalent emissions.

(2) The term "tpy CO_2 equivalent emissions" (CO_2e) shall represent an aggregate amount of GHGs emitted by the regulated activity, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to Subpart A of 40 CFR Part 98, *Global Warming Potentials*, and summing the resultant value for each gas to compute a tpy CO_2e. For purposes of Paragraph (2) of Subsection II of 20.11.42.7 NMAC, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

JJ. "Subsidiary" means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

KK. "Title I modification" means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is subject to the pre-construction regulations promulgated under Parts C and D of the federal act.

[3/1/94. . .12/1/95; 20.11.42.7 NMAC - Rn, 20 NMAC 11.42.I.7, 10/1/02; A, 2/1/03; A, 8/10/09; A, 1/10/11; A, 5/13/13]

20.11.42.12 PERMIT REQUIREMENTS:

A. Permit applications:

(1) **Duty to apply.** For each 20.11.42 NMAC source, the owner or operator shall submit a timely and complete permit application in accordance with 20.11.42 NMAC.

(2) **Timely application.**

(a) **A timely application is:**

(i) for first time applications, one that is submitted within 12 months after the source commences operation as a 20.11.42 NMAC source;

(ii) for purposes of permit renewal, one that is submitted at least 12 months prior to the date of permit expiration;

(iii) for the acid rain portion of permit applications for initial phase II acid rain sources under Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(b) Reserved.

(3) **Completeness of application.**

(a) To be deemed complete, an application must provide all information required pursuant to Paragraph (4), of Subsection A of 20.11.42.12 NMAC, except that applications for permit modifications need supply such information only if it is related to the proposed change.

(b) If, while processing an application, regardless of whether it has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or

take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(c) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(d) The applicant's ability to operate without a permit, as set forth in Subparagraph (b), of Paragraph (1), of Subsection B of 20.11.42.2 NMAC, shall be in effect from the date a timely application is submitted until the final permit is issued or disapproved, provided that the applicant adequately submits any requested additional information by the deadline specified by the department.

(4) **Content of application**. Any person seeking a permit under 20.11.42 NMAC shall do so by filing a written application with the department. The applicant shall submit three copies of the permit application, or more, as requested by the department. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under 20.11.2 NMAC, *Fees*. Fugitive emissions shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. All applications shall:

(a) be made on forms furnished by the department, which for the acid rain portions of permit applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations promulgated under Title IV of the federal act;

(b) state the company's name and address (and, if different, plant name and address), together with the names and addresses of the owner(s), responsible official and the operator of the source, any subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and corporate or partnership relationship to other permittee's subject to 20.11.42 NMAC, and the telephone numbers and names of the owners' agent(s) and the site contact(s) familiar with plant operations;

(c) state the date of the application;

(d) include a description of the source's processes and products (by standard industrial classification code) including any associated with alternative scenarios identified by the applicant, and a map, such as the 7.5 minute topographic quadrangle map published by the United States geological survey or the most detailed map available showing the exact location of the source; the location shall be identified by latitude and longitude or by UTM coordinates;

(e) for all emissions of all air pollutants for which the source is major and all emissions of regulated air pollutants, provide all emissions information, calculations and computations for the source and for each emissions unit, except for insignificant activities (as defined in Subsection R of 20.11.42.7 NMAC); this shall include:

(i) a process flow sheet of all components of the facility which would be involved in routine operations and emissions;

(ii) identification and description of all emission points in sufficient detail to establish the basis for fees and applicability of requirements of the state and federal acts;

(iii) emissions rates in tons per year, pounds per hour and other terms necessary to establish compliance consistent with the applicable standard reference test method;

(iv) specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent it is needed to determine or regulate emissions;

(v) identification and full description, including all calculations and the basis for all control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

(vi) the maximum and standard operating schedules of the source, as well as any work practice standards or limitations on source operation which affect emissions of regulated pollutants;

(vii) an operational plan defining the measures to be taken to mitigate source emissions during startups, shutdowns and emergencies;

(viii) other relevant information as the department may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to Section 123 of the federal act); and

(ix) for each alternative operating scenario identified by the applicant, all of the information required in Items (i) through (viii) above, as well as additional information determined to be necessary by the department to define such alternative operating scenarios;

(f) provide a list of insignificant activities (as defined in Subsection R of 20.11.42.7 NMAC) at the source, their emissions, to the extent required by the department, and any information necessary to determine applicable requirements;

(g) provide a citation and description of all applicable air pollution control requirements, including:

(i) sufficient information related to the emissions of regulated air pollutants to verify the requirements that are applicable to the source; and

(ii) a description of or reference to any applicable test method for determining compliance with each applicable requirement;

(h) provide an explanation of any proposed exemptions from otherwise applicable requirements;

(i) provide other specific information that may be necessary to implement and enforce other requirements of the state or federal acts or to determine the applicability of such requirements, including information necessary to collect any fees owed under 20.11.2 NMAC, *Fees*;

(j) for applications which:

(i) are required pursuant to the transition schedule in Subparagraph (b), of Paragraph (2), of Subsection A of 20.11.42.12 NMAC; or

(ii) for subsequent applications or modifications, where emissions or anticipated emissions have increased since modeling for a modification or new source construction was reviewed under 20.11.41 NMAC or 20.11.42 NMAC: submit a dispersion modeling analysis, using EPA approved models and procedures, showing whether emissions from the source would cause air pollutant concentrations in excess of any New Mexico ambient air quality standard for nitrogen oxides, sulfur oxides, total suspended particulates or non-methane hydrocarbons, or any national ambient air quality standard; air pollutants that are not emitted in significant amounts (as defined in 40 CFR 52.21(b)(23)(i)) during routine operations need not be modeled; the department may waive modeling with respect to ozone if the department determines that emissions from the source are not likely to cause ozone concentrations in excess of the national ambient air quality standard;

(k) provide certification of compliance, including:

(i) a certification, by a responsible official consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC of the source's compliance status for each applicable requirement;

(ii) a statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;

(iii) a statement that the source will continue to be in compliance with applicable requirements for which it is

in compliance, and will, in a timely manner or at such schedule expressly required by the applicable requirement, meet additional applicable requirements that become effective during the permit term;

(iv) a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department; and

(v) a statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the federal act;

(l) for sources that are not in compliance with all applicable requirements at the time of permit application, provide a compliance plan that contains:

(i) a description of the compliance status of the source with respect to all applicable requirements;

(ii) a narrative description of how the source will achieve compliance with such requirements for which it is not in compliance;

(iii) a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements; the schedule of compliance shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of compliance; any such schedule of compliance shall be supplemental to, and shall not prohibit the department from taking any enforcement action for noncompliance with, the applicable requirements on which it is based;

(iv) a schedule for submission of certified progress reports no less frequently than every six months; and

(v) for the portion of each acid rain source subject to the acid rain provisions of Title IV of the federal act, the compliance plan content requirements specified in this paragraph, except as specifically superseded by regulations promulgated under Title IV of the federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(5) **Certification.** Any document, including any application form, report, or compliance certification, submitted pursuant to 20.11.42 NMAC shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

B. Confidential information protection:

(1) All confidentiality claims made regarding material submitted to the department under 20.11.42 NMAC shall be reviewed in accordance with the provisions of the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-11 NMSA 1978 and the New Mexico Inspection of Public Records Act, Section 14-2-1, et seq. NMSA 1978.

(2) In the case where an applicant or permittee has submitted information to the department under a claim of confidentiality, the department may also require the applicant or permittee to submit a copy of such information directly to the administrator.

(3) An operating permit is a public record, and not entitled to protection under Section 114(c) of the federal act.

C. Permit content:

(1) **Permit conditions.**

(a) The department shall specify conditions upon a permit, including emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

(i) for major sources, include all applicable requirements for all relevant emissions units in the major source;

(ii) for any non-major source subject to Section 20.11.42.2 NMAC, include all applicable requirements which apply to emissions units that cause the source to be subject to 20.11.42 NMAC;

(iii) specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(iv) include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit; and

(v) include a provision to ensure that the permittee pays fees to the department consistent with the fee schedule in 20.11.2 NMAC, *Fees*;

(vi) for purposes of the permit shield, identify any requirement specifically identified in the application or significant permit modification that the department has determined is not applicable to the source, and state the basis for any such determination.

(b) Each permit issued shall, additionally, include provisions stating that:

(i) the permittee shall comply with all terms and conditions of the permit; any permit noncompliance is grounds for enforcement action; in addition, noncompliance with federally enforceable permit conditions constitutes a violation of the federal act;

(ii) it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

(iii) the permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with Subsection F of 20.11.42.13 NMAC;

(iv) the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition;

(v) the permit does not convey any property rights of any sort, or any exclusive privilege;

(vi) within the period specified by the department, the permittee shall furnish any information that the department may request in writing to determine whether cause exists for reopening and revising, revoking and reissuing, or termination of the permit or to determine compliance with the permit; upon request, the permittee shall also furnish to the department copies of records required by the permit to be maintained.

(c) The terms and conditions for all alternative operating scenarios identified in the application and approved by the department:

(i) shall require that the permittee maintain a log at the permitted facility which documents, contemporaneously with any change from one operating scenario to another, the scenario under which the facility is operating; and

(ii) shall, for each such alternative scenario, meet all applicable requirements and the requirements of 20.11.42 NMAC.

(d) The department may impose conditions regulating emissions during startup and shutdown.

(e) All permit terms and conditions which are required under the federal act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally enforceable under the federal act any terms or conditions included in the permit that are not required under the federal act or under any of its applicable requirements.

(f) The issuance of a permit, or

the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law or regulation.

(g) The department may include part or all of the contents of the application as terms and conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon emissions of regulated pollutants for which there are no applicable requirements, unless the source is major for that pollutant.

(h) Fugitive emissions from a source shall be included in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(i) The acid rain portion of operating permits for acid rain sources shall:

(i) state that, where an applicable requirement of the federal act is more stringent than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator;

(ii) contain a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no permit modification under this regulation shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source; the permittee may not use allowances as a defense to noncompliance with any other applicable requirement; any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the federal act.

(2) **Permit duration.** The department shall issue operating permits for a fixed term not to exceed five years.

(3) **Monitoring.**

(a) Each permit shall contain all emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.

(b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of record keeping designed to serve as monitoring), the permit shall require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Paragraph (5), of Subsection C of 20.11.42.12 NMAC. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(c) The permit shall also contain specific requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

(4) **Record keeping.**

(a) The permit shall require record keeping sufficient to assure and verify compliance with the terms and conditions of the permit, including:

(i) the date, place as defined in the permit, and time of sampling or measurements;

(ii) the date(s) analyses were performed;

(iii) the company or entity that performed the analyses;

(iv) the analytical techniques or methods used;

(v) the results of such analyses; and

(vi) the operating conditions existing at the time of sampling or measurement.

(b) Records of all monitoring data and support information shall be retained for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(5) **Reporting.** The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including:

(a) submittal of reports of any required monitoring at least every six months; the reports shall be due to the department within 45 days of the end of the permittee's reporting period; all instances of deviations from permit requirements, including emergencies, must be clearly identified in such reports; all required reports must be certified by a responsible official consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC;

(b) prompt reporting of all deviations (including emergencies) from permit requirements, including the date, time, duration and probable cause of such deviations, the quantity and pollutant type of excess emissions resulting from the deviation, and any corrective actions or preventive measures taken; such reports shall include telephone, verbal, e-mail or facsimile communication within 24 hours of the start of the next business day and written notification within 10 days;

(c) submittal of compliance certification reports at least every 12 months (or more frequently if so specified by an applicable requirement) certifying the source's compliance status with all permit terms and conditions and all applicable requirements relevant to the source, including those related to emission limitations or work practices; the reports shall be due to the department within 30 days of the end of the permittee's reporting period; such compliance certifications shall be submitted to the administrator as well as to the department and shall include:

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) the compliance status of the source;

(iii) whether compliance was continuous or intermittent;

(iv) the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit; and

(v) such other facts as the department may require to determine the compliance status of the source;

(d) such additional provisions as may be specified by the administrator to determine the compliance status of the source.

(6) **Compliance.** To assure and verify compliance with the terms and conditions of the permit and with 20.11.42 NMAC, permits shall also:

(a) require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the department to perform the following:

(i) enter upon the permittee's premises where a source is located or emission related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy any records that must be kept under the conditions of the permit;

(iii) inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) sample or monitor any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements or as otherwise authorized by the federal act;

(b) require that sources required

under Subparagraph (k), of Paragraph (4), of Subsection A of 20.11.42.12 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more frequently if specified in the applicable requirement or by the department; such progress reports shall be consistent with the schedule of compliance and requirements of Subparagraph (k), of Paragraph (4), of Subsection A of 20.11.42.12 NMAC, and shall contain:

(i) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(c) include such other provisions as the department may require.

(7) **Operational flexibility.**

(a) **Section 502(b)(10) changes.**

(i) The permittee may make Section 502(b)(10) changes, as defined in Section 20.11.42.7 NMAC, without applying for a permit modification, if those changes are not Title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).

(ii) For each such change, the permittee shall provide written notification to the department and the administrator at least seven days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(iii) The permittee and department shall attach each such notice to their copy of the relevant permit.

(iv) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

(b) **Emissions trading within a facility.**

(i) The department shall, if an applicant requests it, issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit in addition to any applicable requirements. Such terms and conditions shall include all terms and conditions required under Subsection C of 20.11.42.12 NMAC to determine compliance. If applicable requirements apply to the requested emissions trading, permit conditions shall be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval.

(ii) The applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable requirements.

(iii) For each such change, the permittee shall provide written notification to the department and the administrator at least seven days in advance of the proposed changes. Such notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(iv) The permittee and department shall attach each such notice to their copy of the relevant permit.

(8) **Off-permit changes.**

(a) Permittees are allowed to make, without a permit modification, changes that are not addressed or prohibited by the operating permit, if:

(i) each such change meets all applicable requirements and shall not violate any existing permit term or condition;

(ii) such changes are not subject to any requirements under Title IV of the federal act and are not Title I modifications;

(iii) such changes are not subject to permit modification procedures under Subsection E of 20.11.42.13 NMAC; and

(iv) the permittee provides contemporaneous written notice to the department and EPA of each such change, except for changes that qualify as insignificant activities; such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted and any applicable requirement that would apply as a result of the change.

(b) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(9) **Permit shield.**

(a) Except as provided in 20.11.42 NMAC, the department shall expressly include in a 20.11.42 NMAC permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) such applicable requirements are included and are specifically identified in the permit; or

(ii) the department, in acting on the permit application or significant permit modification, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A 20.11.42 NMAC permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide a shield for that provision.

(c) Nothing in 20.11.42.12 NMAC or in any 20.11.42 NMAC permit shall alter or affect the following:

(i) the provisions of Section 303 of the federal act - *Emergency Powers*, including the authority of the administrator under Section 303, or the provisions of the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-10 NMSA 1978;

(ii) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) the applicable requirements of the acid rain program, consistent with Section 408(a) of the federal act;

(iv) the ability of EPA to obtain information from a source pursuant to Section 114 of the federal act, or the department to obtain information in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act 74-2-13 NMSA 1978.

(d) The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to Paragraph (4), of Subsection A of 20.11.42.13 NMAC.

(e) The permit shield may extend to terms and conditions that allow emission increases and decreases as part of emissions trading within a facility pursuant to Subparagraph (b), of Paragraph (7), of Subsection C of 20.11.42.12 NMAC, and to all terms and conditions under each operating scenario included pursuant to Subparagraph (e), of Paragraph (1), of Subsection C of 20.11.42.12 NMAC.

(f) The permit shield shall not extend to *administrative permit amendments* under Paragraph (1), of Subsection E

of 20.11.42.13 NMAC, to *minor permit modifications* under Paragraph (2), of Subsection E of [~~20.11.42.12 NMAC~~] 20.11.42.13 NMAC, to *Section 502(b)(10) changes* under Subparagraph (a), of Paragraph (7) of Subsection C of 20.11.42.12 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part under Subsection F of 20.11.42.13 NMAC.

D. General permits:

(1) **Issuance of general permits.**

(a) The department may, after notice and opportunity for public participation and EPA and affected program review, issue a general permit covering numerous similar sources. Such sources shall be generally homogenous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.

(b) Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit.

(2) **Authorization to operate under a general permit.**

(a) The owner or operator of a 20.11.42 NMAC source which qualifies for a general permit must:

(i) apply to the department for coverage under the terms of the general permit;

(ii) apply for an operating permit consistent with Subsection A of 20.11.42.12 NMAC.

(b) The department may, in the general permit, provide for applications which deviate from the requirements of Paragraph (4), of Subsection A of 20.11.42.12 NMAC, provided that such applications meet the requirements of the federal act and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The department shall review the application for authorization to operate under a general permit for completeness within 30 days after its receipt of the application.

(c) The department shall authorize qualifying sources which apply for coverage under the general permit to operate under the terms and conditions of the general permit. The department shall take final action on a general permit authorization request within 90 days of deeming the application complete.

(d) The department may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under Subsection B of 20.11.42.13 NMAC. Such an authorization shall not be a permitting action for purposes of administrative review under the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-7.H NMSA 1978.

(e) Authorization to operate under a general permit shall not be granted for acid rain sources unless provided for in regulations promulgated under Title IV of the federal act.

(f) The permittee shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit.

E. Emergency provision:

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

(2) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(b) the permitted facility was at the time being properly operated;

(c) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(d) the permittee fulfilled notification requirements under Subparagraph (b), of Paragraph (5), of Subsection C of 20.11.42.12 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(4) This provision is in addition to any emergency or upset provision contained in any applicable requirement, except that 20.11.42 NMAC sources shall not be subject to the provisions of 20.11.90.12 NMAC for permit terms and conditions issued under 20.11.42 NMAC.

[3/1/94. . .12/1/95; 20.11.42.12 NMAC - Rn, 20 NMAC 11.42.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.42.II.1, 10/1/02; A, 8/10/09; A, 1/10/11; A, 5/13/13]

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.60 NMAC, Sections 6, 7, 12, 13 and 15, effective 5/13/13.

20.11.60.6 OBJECTIVE: To implement a pre-construction permit program for new or modified major stationary sources that plan to locate in an area where a federal ambient air quality [~~standards are~~] standard is being exceeded.

[20.11.60.6 NMAC - Rp, 20.11.60.6 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.60.7 DEFINITIONS: In addition to the definitions in 20.11.60.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.60.7 NMAC shall govern.

A. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (1)-(3) of Subsection A of 20.11.60.7 NMAC, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under 20.11.60.27 NMAC. Instead, Subsections E and II of 20.11.60.7 NMAC shall apply for those purposes.

(1) 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 consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department 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.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

B. "Administrator" means the administrator of the United States environmental protection agency (USEPA) or an authorized representative.

C. "Adverse impact on visibility" means visibility impairment

which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory 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:

(1) times of visitor use of the mandatory federal class I area; and

(2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 *Definitions*.

D. "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:

(1) the applicable standard set forth in 40 CFR Part 60 or 61;

(2) any applicable state implementation plan emissions limitation including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

E. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with Paragraphs (1)-(4) of Subsection E of 20.11.60.7 NMAC.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of Subsection E of 20.11.60.7 NMAC.

(2) For an existing emissions unit (other than an electric utility steam generating unit) baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10 year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under 20.11.60.7 NMAC or under a plan approved by the administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Paragraph (7) of Subsection B of 20.11.60.15 NMAC.

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of Subsection E of 20.11.60.7 NMAC.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of Subsection E of 20.11.60.7 NMAC, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of Subsection E of 20.11.60.7 NMAC, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of Subsection E of 20.11.60.7 NMAC.

F. "Begin actual construction" means in general, initiation of physical on-site 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 of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

G. "Best available control technology (BACT)" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, 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, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant. 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 Part 60 or 61. If the department determines that technological 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 BACT. 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.

H. "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) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group," that is, which have the same 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 4101-0065 and 003-005-00176-0, respectively).

I. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

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

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

J. "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.

K. "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of 20.11.60 NMAC, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

L. "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

M. "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of 20.11.60 NMAC, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents), and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

N. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

O. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric steam generating unit as defined in Subsection N of 20.11.60.7 NMAC. For purposes of 20.11.60.7 NMAC, there are two types of emissions units as described in Paragraphs (1) and (2) of Subsection O of 20.11.60.7 NMAC.

(1) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of Subsection O of 20.11.60.7 NMAC. A replacement unit, as defined in 20.11.60.7 NMAC, is an existing unit.

P. "Federal class I area" means any federal land that is classified or reclassified as "class I".

Q. "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

R. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including operating permits issued under an EPA-approved program that requires adherence to any permit issued under such program.

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

T. "Lowest achievable emission rate (LAER)" means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard.

U. "Major modification" means:

(1) Any physical change in or change in the method of operation of a major stationary source that would result in:

(a) a significant emissions increase of a regulated new source review pollutant; and

(b) a significant net emissions increase of that pollutant from the major stationary source.

(2) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(3) 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 federal Clean Air 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 accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40

CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166; 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 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source; or

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(4) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.11.60.27 NMAC for a plantwide applicability limit for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.11.60.27 NMAC shall apply.

(5) For the purpose of applying the requirements of 20.11.60.17 NMAC to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Subpart 2, Part D, Title I of the act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(6) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the act.

V. "Major stationary source"

(1) Means:

(a) Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated new source review pollutant, except that lower emission thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the act, according to Items (i)-(vi) of Subparagraph (a) of Paragraph (1) of Subsection V of 20.11.60.7 NMAC.

(i) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(ii) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(iii) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(iv) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(v) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the administrator).

(vi) 70 tons per year of PM_{10} in any serious nonattainment area for PM_{10}.

(b) For the purposes of applying the requirements of 20.11.60.17 NMAC to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in Items (i)-(vi) of Subparagraph (b) of Paragraph (1) of Subsection V of 20.11.60.7 NMAC shall apply in areas subject to Subpart 2 of Part D, Title I of the act.

(i) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) 100 tons per year or more of nitrogen oxides in any area designated under Section 107(d) of the act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(c) any physical change that would occur at a stationary source not qualifying under Subparagraph (a) or (b) of Paragraph (1) of Subsection V of 20.11.60.7 NMAC as a major stationary source, if the change would constitute a major stationary source by itself.

(2) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of Subsection V of 20.11.60.7 NMAC whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) carbon black plants (furnace process);

(b) charcoal production plants;

(c) chemical process plants – not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(d) coal cleaning plants (with thermal dryers);

(e) coke oven batteries;

(f) fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;

(g) fossil fuel boilers (or combination thereof) totaling more than 250 million Btu/hr heat input;

(h) fuel conversion plants;

(i) glass fiber processing plants;

(j) hydrofluoric acid plants;

(k) iron and steel mill plants;

(l) kraft pulp mills;

(m) lime plants;

(n) municipal incinerators capable of charging more than 250 tons of refuse per day;

(o) nitric acid plants;

(p) petroleum refineries;

(q) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(r) phosphate rock processing plants;

(s) Portland cement plant;

(t) primary lead smelters;

(u) primary zinc smelters;

(v) primary aluminum ore reduction plants;

(w) primary copper smelters;

(x) secondary metal production plants;

(y) sintering plants;

(z) sulfur recovery plants;

(aa) sulfuric acid plants;

(bb) taconite ore processing plants; or

(cc) any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the federal Clean Air Act.

W. "Mandatory federal class I area" means those federal lands that

are international parks, national wilderness areas which exceed 5,000 acres in size, national memorial parks which exceed 5,000 acres in size, and national parks which exceed 6,000 acres in size, and which were in existence on August 7, 1977. These areas may not be redesignated.

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

Y. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan (SIP).

Z. "Net emissions increase"

(1) Means, with respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection B of 20.11.60.12 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases under Subparagraph (b) of Paragraph (1) of Subsection Z of 20.11.60.7 NMAC, shall be determined as provided in Subsection E of 20.11.60.7 NMAC, except that Subparagraphs (c) of Paragraph (1) and (d) of Paragraph (2) of Subsection E of 20.11.60.7 NMAC shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs between:

(i) the date five years prior to the commencement of construction on the particular change; and

(ii) the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs.

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

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

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

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(d) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) 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.

(7) Paragraph (1) of Subsection A of 20.11.60.7 NMAC shall not apply for determining creditable increases and decreases or after a change.

AA. "Nonattainment area" means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling, or other methods determined by the administrator to be reliable, to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under Subparagraphs (A) through (C) of Section 107(d)(1) of the federal Clean Air Act.

BB. "Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the administrator and incorporated into the New Mexico state implementation plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major new source review permit.

CC. "Part" means an air quality control regulation under Title 20, Chapter 11 of the New Mexico administrative code (NMAC), unless otherwise noted; as adopted or amended by the board.

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

EE. "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 pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

FF. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents), and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and calculate and record the mass emissions rate (for example, pounds per hour), on a continuous basis.

GG. "Prevention of significant deterioration (PSD) permit" means any permit that is issued under 20.11.61 NMAC.

HH. "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

II. "Projected actual emissions"

(1) Means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated new source review pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions under Paragraph (1) of Subsection II of 20.11.60.7 NMAC, before beginning actual construction, the owner or operator of the major stationary source:

(a) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(b) shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(c) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that

an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection E of 20.11.60.7 NMAC and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(d) in lieu of using the method set out in [~~Paragraphs (1) through (3)~~] Subparagraphs (a) through (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC, may elect to use the emissions unit's potential to emit, in tons per year, as defined under Subsection EE of 20.11.60.7 NMAC.

JJ. "Regulated new source review pollutant", for purposes of 20.11.60 NMAC, means the following:

(1) nitrogen oxides or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated; or

(3) any pollutant that is a constituent or precursor of a general pollutant listed under Paragraphs (1) or (2) of Subsection JJ of 20.11.60.7 NMAC, provided that such constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant; precursors identified by the administrator for purposes of NSR are the following:

(a) volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(b) sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas;

(c) nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

(d) volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations; or

(4) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in nonattainment major NSR permits; compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

KK. "Replacement unit" means an emission unit for which all of the criteria listed in Paragraphs (1)-(4) of Subsection KK of 20.11.60.7 NMAC are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement (unit) does not alter the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

LL. "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 20.11.60.7 NMAC, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

MM. "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

(1) Pollutant emission rates:

(a) carbon monoxide, 100 tons per year;

(b) nitrogen oxides, 40 tons per year;

(c) sulfur dioxide, 40 tons per year;

(d) PM_{10} emissions, 15 tons per year;

(e) ozone, 40 tons per year of volatile organic compounds or nitrogen oxides; or

(f) lead, 0.6 tons per year; or

(g) $PM_{2.5}$, 10 tons per year of direct $PM_{2.5}$ emissions; 40 tons per year of sulfur dioxide emissions; 40 tons per year of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under Subsection JJ of 20.11.60.7 NMAC.

(2) Notwithstanding the significant emissions rate for ozone in Paragraph (1) of Subsection MM of 20.11.60.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(3) For the purposes of applying the requirements of 20.11.60.17 NMAC to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs (1), (2), and (5) of Subsection MM of 20.11.60.7 NMAC shall apply to nitrogen oxides emissions.

(4) Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (1) of Subsection MM of 20.11.60.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(5) Notwithstanding the significant emissions rates for ozone under Paragraphs (1) and (2) of Subsection MM of 20.11.60.7 NMAC, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the act shall be considered a significant net emissions increase.

NN. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant for that pollutant.

OO. "Stationary source" means any building, structure, facility, or installation which emits or may emit any regulated new source review pollutant.

PP. "Temporary source" means a stationary source which changes its location or ceases to exist within one year from the date of initial start of operations.

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

[20.11.60.7 NMAC - Rp, 20.11.60.7 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.60.12 APPLICABILITY:

A. Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of 20.11.60 NMAC prior to the start of construction or modification if either of the following conditions under Paragraph (1) or (2) of Subsection A of 20.11.60.12 NMAC apply.

(1) **Sources that would locate in a designated nonattainment area.** The proposed major stationary source or major modification would be located within a nonattainment area so designated pursuant to Section 107(d)(1)(A)(i) of the federal Clean Air Act and would emit a regulated new source review pollutant for which it is major and for which the area is designated nonattainment.

(2) **Sources locating in designated clean or unclassifiable areas which would cause or contribute to a violation of a NAAQS.**

(a) The proposed major stationary source or major modification would be located within an area designated as attainment or unclassifiable for any NAAQS pursuant to Section 107 of the federal Clean Air Act, and will emit a regulated new source review pollutant for which it is major and when it would cause or contribute to a violation of any NAAQS.

(b) A major source or major modification will be considered to cause or contribute to a violation of a NAAQS when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Significant ambient concentrations:

	Averaging Time				
Pollutant	Annual	24-hr	8-hr	3-hr	1-hr
Sulfur Dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	25 $\mu g/m^3$	--
$PM_{2.5}$	0.3 $\mu g/m^3$	1.2 $\mu g/m^3$	--	--	--
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	--	--
Nitrogen Dioxide	1.0 $\mu g/m^3$	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

(3) A proposed major source or major modification subject to Subsection A of 20.11.60.12 NMAC may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, the department shall deny the proposed construction.

(4) The requirements of Subsection A of 20.11.60.12 NMAC shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the act.

B. Applicability procedures.

(1) Except as otherwise provided in Subsection C of 20.11.60.12 NMAC, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e. the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3), (4) and (6) of Subsection B of 20.11.60.12 NMAC. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e. the second step of the process) is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that involve existing emissions units.** A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) [Reserved]

(6) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of Subsection B of 20.11.60.12 NMAC as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Subsection MM of 20.11.60.7 NMAC).

C. For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.11.60.27 NMAC.

[20.11.60.12 NMAC - N, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.60.13 SOURCE OBLIGATION AND ENFORCEABLE PROCEDURES:

A. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which 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 the requirements of regulations approved pursuant to ~~[20.11.60 NMAC]~~ 40 CFR 51.165 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

B. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state or federal law, including provisions of the Air Quality Control Act, Sections 74-2-1 to 74-2-17, NMSA 1978, and any applicable regulations of the board.

C. Any owner or operator who commences construction or operates a major stationary source or major modification without, or not in accordance with, a permit issued under the requirements of 20.11.60 NMAC shall be subject to enforcement action.

D. 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.

E. For phased construction projects, the determination of the lowest achievable emission rate 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 lowest achievable emission rate.

F. If the owner or operator previously issued a permit under 20.11.60 NMAC applies for an extension as provided for under Subsection D of 20.11.60.13 NMAC, and the new proposed date of construction is greater than 18 months from the date the permit would become invalid, the determination of lowest achievable emission rate shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.

[20.11.60.13 NMAC - Rp, 20.11.60.12 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.60.15 BASELINE FOR DETERMINING CREDIT FOR EMISSION AND AIR QUALITY OFFSETS:

A. For sources and modifications subject to any preconstruction review program adopted pursuant to ~~[20.11.60 NMAC]~~ Subsection 40 CFR 51.165(a), the baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan (SIP) in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(1) the demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) the applicable SIP does not contain an emissions limitation for that source or source category.

B. Combustion of fuels.

(1) Where the emissions limit under the applicable SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

(2) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable SIP for the type of fuel being burned at the time the permit application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure, which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

(3) **Emission reduction credit from shutdowns and curtailments.**

(a) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in Items (i) and (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC.

(i) Such reductions are surplus, permanent, quantifiable, and federally enforceable.

(ii) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of Item (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC, the department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(b) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in Item (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC may be generally credited only if:

(i) the shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(ii) the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of Item (i) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC.

(4) No emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's *Recommended Policy on Control of Volatile Organic Compounds* (42 FR 35314, July 8, 1977) and any amendments thereto.

(5) All emission reductions claimed as offset credit shall be federally enforceable.

(6) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51 Appendix S Section IV.D.

(7) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the department has not relied on it in demonstration attainment or reasonable further progress.

(8) [Reserved]

(9) [Reserved]

(10) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

C. All emission reductions claimed as offset credit shall occur prior to or concurrent with the start of operation of the proposed source. In addition, past reductions must have occurred later than the date upon which the area became nonattainment in order to be creditable.

D. The owner or operator desiring to utilize an emission reduction as an offset shall submit to the department the following information:

(1) a detailed description of the process to be controlled and the control technology to be used; and

(2) emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) the effective date of the reduction.

[20.11.60.15 NMAC - Rp, 20.11.60.14 NMAC, 1/23/06; 20.11.60.15 NMAC - N, 8/30/10; A, 5/13/13]

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.61 NMAC, Sections 2, 5, 6, 7, 10, 11, 12, 14, 15, 18, 20, 23, 24, 27, 29 and 30, effective 5/13/13.

20.11.61.2 SCOPE: Any person constructing any new major stationary source or major modification, as defined in 20.11.61 NMAC, that emits or will emit regulated new source review (NSR) pollutants in an attainment or unclassifiable area shall obtain a permit from the department in accordance with the requirements of 20.11.41 NMAC, *Authority-to-Construct*, and 20.11.61 NMAC prior to the construction or modification.

A. Exempt:

(1) sources within Bernalillo county which are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction;

(2) each regulated [~~new source review~~] NSR pollutant emitted by a source or modification located in a nonattainment area for that pollutant;

(3) after a public hearing, consistent with the public notice and participation provisions of 20.11.41 NMAC, *Authority-to-Construct*, the board may exempt major stationary sources or major modifications if:

(a) the major stationary source would be a nonprofit health or nonprofit educational institution, or a major modification that would occur at such an institution; or

(b) the source or modification is a portable stationary source which has previously received a permit pursuant to 20.11.61 NMAC if:

(i) the owner or operator proposes to relocate the source, and emissions from the source at the new location would be temporary; and

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

(iii) the emissions from the source would not impact any federal class I area nor any area where an applicable increment is known to be violated; and

(iv) reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location; such notice shall be given to the department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the department;

(4) sources or modifications that would be major only if quantifiable fugitive emissions are considered in calculating the potential to emit, and the source does not belong to:

(a) any category in Table 1 of 20.11.61.26 NMAC; or

(b) any other stationary source category which as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

B. Variances: The director may grant a variance to any person constructing a major stationary source or major modification from the federal class I maximum allowable increases consistent with the requirements listed in 40 CFR 52.21(p)(5).

[20.11.61.2 NMAC - Rp, 20.11.61.2 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.61.5 EFFECTIVE DATE: January 23, 2006, unless a later date is cited at the end of a section [~~or paragraph~~].

[20.11.61.5 NMAC - Rp, 20.11.61.5 NMAC, 1/23/06; A, 5/13/13]

20.11.61.6 OBJECTIVE: To minimize air pollutant emissions from new major stationary sources or major modifications in areas classified as in attainment of the national ambient air quality standards (NAAQS) or determined to be unclassifiable pursuant to Section 107(d) of the act.

[20.11.61.6 NMAC - Rp, 20.11.61.6 NMAC, 1/23/06; A, 1/10/11; A, 5/13/13]

20.11.61.7 DEFINITIONS: In addition to the definitions in 20.11.61 NMAC, the definitions in 20.11.1 NMAC, *General Provisions*, shall apply unless there is a conflict between definitions, in which case the definition in 20.11.61 NMAC shall govern.

A. "Act" means the federal Clean Air Act, as amended, 42 U. S. C. Sections 7401 et seq.

B. "Actual emissions" means the actual rate of emissions of a regulated [~~new source review~~] NSR pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of Subsection B of 20.11.61.7 NMAC.

(1) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.11.61.20 NMAC. Instead, Subsections I and VV of 20.11.61.7 NMAC shall apply for those purposes.

(2) 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 consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department 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.

(3) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

C. "Administrator" means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

D. "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 the following:

(1) times of visitor use of the federal class I area; and

(2) the frequency and timing of

natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 *Definitions*.

E. "Air quality related values (AQRV)" means visibility and other scenic, cultural, physical, biological, ecological, or recreational resources which may be affected by a change in air quality resulting from the emissions of a proposed major stationary source or major modification that interferes with the management, protection, preservation, or enjoyment of the [~~air quality related values~~] AQRV of a federal class I area.

F. "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:

(1) the applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) the applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

G. "Associated emission sources" means secondary emissions and all reasonably foreseeable emissions of regulated pollutants from the growth of general residential, commercial, industrial, governmental emission sources and other mobile and non-mobile emission sources which are associated with [~~and/or~~] or support the proposed new major stationary source or major modification. Other mobile and non-mobile emission sources shall include, but not be limited to, new highways and roads or improvements to existing highways and roads to increase capacity, new parking facilities or improvements to existing parking facilities to increase capacity, service enhancements to ground and air public transportation to include the building of new public transportation facilities or improvements to existing public transportation facilities to increase capacity; and the building of new public or private educational facilities or improving existing public or private educational facilities to increase enrollment.

H. "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~~] NAAQS for such pollutant, and is so designated under Section 107(d)(1)(D) or (E) of the act.

I. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated [~~new source review~~] NSR pollutant, as determined in accordance with Paragraphs (1)-(4) of Subsection I of 20.11.61.7 NMAC.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated [~~new source review~~] NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated [~~new source review~~] NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of Subsection I of 20.11.61.7 NMAC.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10 year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under 20.11.61 NMAC or under a plan approved by the administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated [~~new source review~~] NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated [~~new source review~~] NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of Subsection I of 20.11.61.7 NMAC.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of Subsection I of 20.11.61.7 NMAC, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of Subsection I of 20.11.61.7 NMAC, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of Subsection I of 20.11.61.7 NMAC.

J. "Baseline area"

(1) Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section [~~107(d)(1)(D) or (E)~~] 107(d)(1)(A)(ii) or (iii) of the act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established,

as follows: equal to or greater than one microgram per cubic meter (1 $\mu g/m^3$) (annual average) [~~of the pollutant for which the minor source baseline date is established~~] for SO_2, NO_2 or PM_{10}; or equal to or greater than 0.3 $\mu g/m^3$ (annual average) for $PM_{2.5}$.

(2) Area redesignations under Section [~~107(d)(1) (D) or (E)~~] 107(d)(1)(A)(ii) or (iii) of the act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) establishes a minor source baseline date; or

(b) is subject to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166, and would be constructed in the same state as the state proposing the redesignation.

(3) Any baseline area established originally for total suspended particulates (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date in accordance with Paragraph (3) of Subsection MM of 20.11.61.7 NMAC.

K. "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(1) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of Subsection K of 20.11.61.7 NMAC;

(b) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

L. "Begin actual construction" means, in general, the 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 of underground pipework and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities which mark the initiation of the change.

M. "Best available control technology (BACT)" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated [~~new source review~~] NSR pollutant which would be emitted from any proposed major stationary source or major modification, 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 pollutant. 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. If the director determines that technological 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.

N. "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) except the activities of any vessel. 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 (SIC) manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

O. "Class I area" means any federal land that is classified or reclassified as "class I" as listed in 20.11.61.25 NMAC.

P. "Commence" as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

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

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Q. "Complete" means, in reference to an application for a permit, that the department has determined the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

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

S. "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of 20.11.61 NMAC, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

T. "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

U. "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of 20.11.61 NMAC, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

V. "Department" means the city of Albuquerque, environmental health department or its successor agency.

W. "Director" means the director of the city of Albuquerque, environmental health department or the director of its successor agency.

X. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and

more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Y. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated [~~new source review~~] NSR pollutant and includes an electric utility steam generating unit as defined in 20.11.61.7 NMAC. For purposes of 20.11.61 NMAC, there are two types of emissions units as follows:

(1) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated;

(2) an existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of Subsection Y of 20.11.61.7 NMAC. A replacement unit is an existing unit.

Z. "Federal land manager" means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior department) with authority over such lands.

AA. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including:

(1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

(2) requirements within any applicable state implementation plan (SIP);

(3) any permit requirements established pursuant to 40 CFR 52.21; or

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that expressly requires adherence to any permit issued under such program.

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

CC. "Greenhouse gases" or "GHGs" means the air pollutant defined in § 86.1818–12(a) of Chapter I of Title 40 of the CFR, as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

DD. "High terrain" means any area having an elevation 900 feet or more above the base of a source's stack.

EE. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

FF. "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 non-air quality environmental impacts.

GG. "Low terrain" means any area other than high terrain.

HH. "Lowest achievable emission rate (LAER)" means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

II. "Major modification"

(1) Means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase of a regulated [~~new source review~~] NSR pollutant; and a significant net emissions increase of that pollutant from the major stationary source.

(2) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(3) 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 accommodating 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 Subpart I or 40 CFR 51.166; 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 51.166;

(f) an increase in the hours of operation or in the production rate, 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 Subpart I or 40 CFR 51.166;

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

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located; and

(ii) other requirements necessary to attain and maintain the [~~national ambient air quality standards~~] NAAQS during the project and after it is terminated;

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated [~~new source review~~] NSR pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis; or

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(4) This definition shall not apply with respect to a particular regulated [~~new source review~~] NSR pollutant when the major stationary source is complying with the requirements under 20.11.61.20 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.11.61.20 NMAC shall apply.

JJ. "Major source baseline date" means:

(1) in the case of [~~particulate matter~~] PM_{10} and sulfur dioxide, January 6, 1975; [~~and~~]

(2) in the case of nitrogen dioxide, February 8, 1988; and

(3) in the case of $PM_{2.5}$, October

20, 2010.

KK. "Major stationary source"

(1) means:

(a) any stationary source listed in Table 1 of 20.11.61.26 NMAC which emits, or has the potential to emit, 100 tons per year or more of any regulated [~~new source review~~] NSR pollutant;

(b) notwithstanding the stationary source categories specified in Subparagraph (a) of Paragraph (1) of Subsection KK of 20.11.61.7 NMAC, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated [~~new source review~~] NSR pollutant; or

(c) any physical change that would occur at a stationary source not otherwise qualifying under Subsection KK of 20.11.61.7 NMAC, as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 of 20.11.61.26 NMAC or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

LL. "Mandatory federal class I area" means any area identified in 40 CFR Part 81, Subpart D.

MM. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or major modification subject to 40 CFR 52.21, or [~~20.11.61 NMAC~~] to regulations approved pursuant to 40 CFR 51.166, submits a complete application under the relevant regulations.

(1) The trigger dates are:

(a) August 7, 1977, for [~~particulate matter~~] PM_{10} and sulfur dioxide; and

(b) February 8, 1988 for nitrogen dioxide; and

(c) October 20, 2011, for $PM_{2.5}$.

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

(a) the area in which the proposed major stationary source or major modification would construct is designated as attainment or unclassifiable under Section [~~107(d)(i)(D) or (E)~~] 107(d)(1)(A)(ii) or (iii) of the federal act for the pollutant on the date of its complete application under 40 CFR 52.21 or [~~20.11.61 NMAC~~] under regulations approved pursuant to 40 CFR 51.166; and

(b) 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.

(3) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the department may rescind any such minor source baseline date where it can be shown, to the director's satisfaction that, either the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

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

OO. "Necessary preconstruction approvals or permits" mean those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

PP. "Net emissions increase"

(1) Means, that with respect to any regulated [~~new source review~~] NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.11.61.11 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection I of 20.11.61.7 NMAC, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection I of 20.11.61.7 NMAC shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) the date five years prior to the commencement of construction on the particular change; and

(b) the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs between:

(i) the date five years prior to the commencement of construction on the particular change; and

(ii) the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to [~~20.11.61 NMAC~~] 40 CFR 51.166, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(c) the increase or decrease in emissions did not occur at a ***clean unit***, as defined in 40 CFR 51.166 (b)(3)(iii)(c) and Federal Register Vol. 76 No. 61, 3/30/11, p. 17554.

(d) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in Paragraph (3) of Subsection KK of 20.11.61.7 NMAC or it occurs at an emission unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in Paragraph (3) of Subsection KK of 20.11.61.7 NMAC and that are not, by themselves, part of a listed source category.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or oxides of nitrogen that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

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

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

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

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(7) 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.

(8) Paragraph (2) of Subsection B of 20.11.61.7 NMAC shall not apply for determining creditable increases and decreases.

QQ. "Nonattainment area" means an area which has been designated under Section 107 of the act as nonattainment for one or more of the [~~national ambient air quality standards~~] NAAQS by EPA.

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

SS. "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 the limitation would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

TT. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

UU. "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

VV. "Projected actual emissions"

(1) Means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated [~~new source review~~] NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated [~~new source review~~] NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(a) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under an approved SIP; and

(b) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(c) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection I of 20.11.61.7 NMAC and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(3) [~~may elect to use the emissions unit's potential to emit in tons per year~~] in lieu of using the method set out in Subparagraphs (a)-(c) of Paragraph (2) of Subsection VV of 20.11.61.7 NMAC, may elect to use the emissions unit's potential to emit in tons per year.

WW. "Regulated new source review pollutant" or "regulated NSR pollutant" means the following:

(1) any pollutant for which a [~~national ambient air quality standard~~] NAAQS has been promulgated; [~~and~~] this includes, but is not limited to the following:

(a) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits; compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of 40 CFR 51.166 unless the applicable implementation plan required condensable particulate matter to be included;

(b) any pollutant identified under Subparagraph (b) of Paragraph (1) of Subsection WW of 20.11.61.7 NMAC as a constituent or precursor to [~~such~~] a pollutant for which a NAAQS has been promulgated; precursors identified by the administrator for purposes of [~~new source review~~] NSR are the following:

[~~(a)~~] (i) volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

[~~(b)~~] (ii) sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas;

[~~(c)~~] (iii) nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

[~~(d)~~] (iv) volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

(2) any pollutant that is subject to any standard promulgated under Section 111 of the act;

(3) any class I or II substance subject to a standard promulgated under or established by Title VI of the act;

(4) any pollutant that otherwise is "subject to regulation" under the act as defined in Subsection CCC of 20.11.61.7 NMAC;

(5) notwithstanding Paragraphs (1) through (4) of Subsection WW of 20.11.61.7 NMAC, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in Section 112 of the act, or added to the list pursuant to Section 112(b)(2) of the act, and which have not been delisted pursuant to Section 112(b)(3) of the act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the act;

(6) particulate matter (PM) emissions, $PM_{2.5}$ emissions, and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in PSD permits; compliance with emissions limitations for PM, $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of 20.11.61 NMAC unless the applicable implementation plan required condensable particulate matter to be included.

XX. "Replacement unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from

shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

YY. "Secondary emissions" means emissions which 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 [~~20.11.61 NMAC~~] 40 CFR 51.166, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

ZZ. "Significant" means:

(1) in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in Table 2 of 20.11.61.27 NMAC, a rate of emissions that would equal or exceed any of the corresponding emission rates listed in Table 2 of 20.11.61.27 NMAC;

(2) in reference to a net emissions increase or the potential of a source to emit a regulated [~~new source review~~] NSR pollutant that Paragraph (1) of Subsection ZZ of 20.11.61.7 NMAC, does not list, any emissions rate; and

(3) notwithstanding Paragraph (1) of Subsection ZZ of 20.11.61.7 NMAC, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour average).

AAA. "Significant emissions increase" means, for a regulated [~~new source review~~] NSR pollutant, an increase in emissions that is significant for that pollutant.

BBB. "Stationary source" means any building, structure, facility, or installation which emits, or may emit, any regulated [~~new source review~~] NSR pollutant.

CCC. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the administrator in Subchapter C of Chapter I of Title 40 of the CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) Greenhouse gases (GHGs) shall not be subject to regulation except as provided in Paragraphs (4) and (5) of Subsection CCC of 20.11.61.7 NMAC and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in 20.11.61.20 NMAC, and complies with the PAL permit containing the GHG PAL.

(2) For purposes of Paragraphs (3) through (5) of Subsection CCC of 20.11.61.7 NMAC, the term "tpy CO_2 equivalent emissions (CO_2e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of Part 98 of Chapter I of Title 40 of the CFR — *Global Warming Potentials*; for purposes of Paragraph (2) of Subsection CCC of 20.11.61.7 NMAC, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);

(b) sum the resultant value from Subparagraph (a) of Paragraph (2) of Subsection CCC of 20.11.61.7 NMAC for each gas to compute a tpy CO_2e.

(3) The term "emissions increase" as used in Paragraphs (4) and (5) of Subsection CCC of 20.11.61.7 NMAC, shall mean that both a significant emissions increase (as calculated using the procedures in Subsection D of 20.11.61.11 NMAC) and a significant net emissions increase (as defined in Subsection PP of 20.11.61.7 NMAC and Subsection ZZ of 20.11.61.7 NMAC) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in Table 2 of 20.11.61.27 NMAC.

(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) the stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(b) the stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(5) beginning July 1, 2011, in addition to the provisions in Paragraph (4) of Subsection CCC of 20.11.61.7 NMAC, the pollutant GHGs shall also be subject to regulation:

(a) at a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(b) at an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

DDD. "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.

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

FFF. "Volatile organic compound (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions; this includes any such organic compound other than those which the administrator designates as having negligible photochemical reactivity under 40 CFR 51.100(s).

[20.11.61.7 NMAC - Rp, 20.11.61.7 NMAC, 1/23/06; A, 5/15/06; A, 8/30/10; A, 1/10/11; A, 5/13/13]

20.11.61.10 DOCUMENTS: Documents incorporated and cited in

20.11.61 NMAC may be viewed at the Albuquerque environmental health department, One Civic Plaza NW, 3rd Floor, [~~Room~~] Suite 3023, Albuquerque, NM 87102.

[20.11.61.10 NMAC - Rp, 20.11.61.11 NMAC, 1/23/06; A, 5/13/13]

20.11.61.11 APPLICABILITY:

A. The requirements of 20.11.61 NMAC apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

B. The requirements of Sections 20.11.61.12 NMAC [~~through~~] and 20.11.61.13 NMAC, Subsections A through C of 20.11.61.14 NMAC, Paragraph (1) of Subsection B of 20.11.61.15 NMAC, Subsections A and B of 20.11.61.16 NMAC, 20.11.61.17 NMAC, Subsections A through C of 20.11.61.18 NMAC, Subsections B and C of 20.11.61.21 NMAC and 20.11.61.24 NMAC apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as 20.11.61 NMAC otherwise provides.

C. No new major stationary source or major modification to which the requirements of Subsections A, B, C and D of 20.11.61.12 NMAC, [~~Sections~~] Section 20.11.61.13 NMAC [~~through~~], Subsections A through C of 20.11.61.14 NMAC, Paragraph (1) of Subsection B of 20.11.61.15 NMAC, Subsections A and B of 20.11.61.16 NMAC, 20.11.61.17 NMAC, Subsections A through C of 20.11.61.18 NMAC, Subsections B and C of 20.11.61.21 NMAC and 20.11.61.24 NMAC apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

D. Applicability procedures.

(1) Except as otherwise provided in Subsection E of 20.11.61.11 NMAC, and consistent with the definition of major modification, a project is a major modification for a regulated [~~new source review~~] NSR pollutant if it causes a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) through [~~(4)~~] (5) of Subsection D of 20.11.61.11 NMAC. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in Subsection PP of 20.11.61.7 NMAC. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated [~~new source review~~] NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated [~~new source review~~] NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated [~~new source review~~] NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of Subsection D of 20.11.61.11 NMAC as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

E. For any major stationary source for a PAL for a regulated [~~new source review~~] NSR pollutant, the major stationary source shall comply with requirements under 20.11.61.20 NMAC.

[20.11.61.11 NMAC - N, 1/23/06; A, 8/30/10; A, 1/10/11; A, 5/13/13]

20.11.61.12 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:

A. 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 20.11.61 NMAC shall be subject to enforcement action.

B. Approval to construct shall not relieve any person from the responsibility to comply fully 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.

C. 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; the administrator may extend the 18-month period upon a satisfactory showing that an extension is justified; this provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

D. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which 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 20.11.61 NMAC shall apply to the source or modification as though construction had not yet commenced on the source or modification.

E. Except as otherwise provided in [~~Subparagraph (b) of~~] Paragraph (6) of Subsection E of 20.11.61.12 NMAC the following specific provisions apply with respect to any regulated [~~new source review~~] NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility within the meaning of Paragraph (6) of Subsection E of 20.11.61.12 NMAC that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection VV of 20.11.61.7 NMAC for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) a description of the project;

(b) identification of the emissions unit(s) whose emissions of a regulated [~~new source review~~] NSR pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated [~~new source review~~] NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection VV of 20.11.61.7 NMAC and an explanation

for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of Subsection E of 20.11.61.12 NMAC to the department. Nothing in Paragraph (2) of Subsection E of 20.11.61.12 NMAC shall be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated [~~new source review~~] NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Subparagraph (b) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated [~~new source review~~] NSR pollutant at such emissions unit. For purposes of Paragraph (3) of Subsection E of 20.11.61.12 NMAC, fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in Table 1 of 20.11.61.26 NMAC or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Subparagraph (c) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of Subsection E of 20.11.61.12 NMAC, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC) by a significant amount for that regulated [~~new source review~~] NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to Paragraph (3) of Subsection E of 20.11.61.12 NMAC; and

(c) any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(6) A "reasonable possibility" under Subsection E of 20.11.61.12 NMAC occurs when the owner or operator calculates the project to result in either:

(a) a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AAA of 20.11.61.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated [~~new source review~~] NSR pollutant; or

(b) a projected actual emissions increase that, added to the amount of emissions excluded under Paragraph (3) of Subsection VV of 20.11.61.7 NMAC, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AAA of 20.11.61.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated [~~new source review~~] NSR pollutant; for a project for which a reasonable possibility occurs only within the meaning of Subparagraph (b) of Paragraph (6) of Subsection E of 20.11.61.12 NMAC, and not also within the meaning of Subparagraph (a) of Paragraph (6) of Subsection E of 20.11.61.12 NMAC, then provisions of Paragraphs (2) through (5) of Subsection E of 20.11.61.12 NMAC do not apply to the project.

F. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection E of 20.11.61.12 NMAC available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

[20.11.61.12 NMAC - Rp, 20.11.61.12 NMAC, 1/23/06; A, 8/30/10; A, 1/10/11; A, 5/13/13]

20.11.61.14 CONTROL TECHNOLOGY REVIEW AND INNOVATIVE CONTROL TECHNOLOGY:

A. A new major stationary source shall apply best available control technology for each regulated [~~new source review~~] NSR pollutant that it would have the potential to emit in amounts equal to or greater than the significance levels as listed in Table 2 of 20.11.61.27 NMAC. This requirement applies to each proposed emissions unit or operation that will emit such pollutant.

B. A major modification shall apply best available control technology for each regulated [~~new source review~~] NSR pollutant at the source when a significant net emissions increase occurs. 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.

C. 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.

D. Innovative control technology. The department may approve a system of innovative control technology for the major stationary source or major modification if:

(1) 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

(2) the owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Subsection A of 20.11.61.14 NMAC by a date specified by the department. Such date shall not be later than four years from the time of startup or seven years from permit issuance; and

(3) the source or modification would meet the requirements equivalent to 20.11.61.14 NMAC and 20.11.61.15 NMAC based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department; and

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

(a) cause or contribute to a violation of an applicable [~~national ambient air quality standard~~] NAAQS; nor

(b) impact any federal class I area; nor

(c) impact any area where an applicable increment is known to be violated; and

(5) all other applicable requirements including those for public

participation have been met.

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

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

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

(3) 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.

F. 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 Subsection E of 20.11.61.14 NMAC, the department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

G. If the owner or operator of a major stationary source or major modification previously issued a permit under 20.11.61 NMAC applies for an extension, 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.

[20.11.61.14 NMAC - Rp, 20.11.61.14 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.61.15 AMBIENT IMPACT REQUIREMENTS:

A. The requirements of 20.11.61.15 NMAC shall apply to each pollutant emitted by a new major stationary source or major modification in amounts equal to or greater than that in Table 2 of 20.11.61.27 NMAC. For particulate matter, the source will only be required to perform ambient impact analysis for PM_{10} when the source has the potential to emit significant amounts of PM_{10} as determined from Table 2 of 20.11.61.27 NMAC.

B. Source impact analysis.

(1) **Required demonstration.** The owner or operator of the proposed source or modification shall demonstrate that the allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, (including secondary emissions), would not cause or contribute to air pollution in violation of:

[~~(1)~~] (a) any [~~national ambient air quality standard~~] NAAQS in any air quality control region; or

[~~(2)~~] (b) any applicable maximum allowable increase (as shown in Table 4 of 20.11.61.29 NMAC) over the baseline concentrations in any area.

(2) **Reserved**

C. The owner or operator of the proposed major stationary source or major modification shall demonstrate that neither a violation of Subparagraph (a) or (b) of Paragraph (1) [~~or Paragraph (2)~~] of Subsection B of 20.11.61.15 NMAC will occur.

[20.11.61.15 NMAC - Rp, 20.11.61.15 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.61.18 [~~MONITORING REQUIREMENTS~~] AIR QUALITY ANALYSIS AND MONITORING REQUIREMENTS:

A. Preapplication analysis.

(1) Any application for a permit under regulations approved pursuant to 40 CFR 51.166 (e.g. 20.11.61 NMAC) shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

[~~(1)~~] (a) for a major stationary source, each pollutant [~~for which~~] that it would have the potential to emit [~~is equal to or greater than the significant emission rates as listed in Table 2 of 20.11.61.27 NMAC~~] in a significant amount; or

[~~(2)~~] (b) for a major modification, each pollutant [~~that~~] for which it would result in a significant net emission increase.

[~~B.~~] (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 in any area that the emissions of that pollutant would affect.

[~~C.~~] (3) For pollutants (other than nonmethane hydrocarbons) for which a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(4) [~~Such~~] The continuous air quality monitoring data that is required shall [~~be submitted to the department for at least~~] have been gathered over a period of one year and shall represent the one year period [~~prior to~~] preceding receipt of the permit application. The department has the discretion to:

[~~(1)~~] (a) determine that 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

[~~(2)~~] (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.

[~~D.~~] (5) Ozone monitoring shall be performed if monitoring data is required for volatile organic compounds or oxides of nitrogen. The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51 Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under Subsection A of 20.11.61.18 NMAC.

[~~E. Reserved.~~]

[~~F.~~] **B. Post-construction monitoring.** The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area, including monitoring to validate attainment of ambient air quality standards and to assure that increments are not exceeded.

[~~G.~~] **C. Operation of monitoring stations.** 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 Subsections A through C of 20.11.61.18 NMAC.

[~~H.~~] **D. Exceptions.** The department has the discretion to exempt a proposed major stationary source or major modification from the requirements of Subsections A through C of 20.11.61.18 NMAC with respect to monitoring for a particular pollutant if:

(1) the emissions increase of the pollutant from [~~the~~] a new stationary source or the net emissions increase of the pollutant from [~~the~~] a modification would cause, in any area, [~~increases in ambient concentrations~~] air quality impacts less than the levels listed in Table 3 of 20.11.61.28 NMAC.

[~~I. The department shall exempt a stationary source or modification from the requirements of 20.11.61.18 NMAC with respect to preconstruction monitoring for a particular pollutant if:~~

~~(1) for ozone, volatile organic compound emissions and oxides of nitrogen are less than 100 tons per year; or~~]

(2) [~~the air pollutant is not a~~

~~regulated new source review pollutant; or~~

~~(3)~~] 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 of 20.11.61.28 NMAC; or

(3) the pollutant is **not** listed in Table 3 of 20.11.61.28 NMAC.

[20.11.61.18 NMAC - Rp, 20.11.61.18 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.61.20 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs):

A. Applicability.

(1) The department may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO_2e basis, for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements of 20.11.61.20 NMAC. The term "PAL" shall mean "actuals PAL" throughout 20.11.61.20 NMAC.

(2) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements of 20.11.61.20 NMAC, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the plan's major NSR program; [~~and~~]

(c) is not subject to the provisions in Subsection D of 20.11.61.12 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major [~~new source review~~] NSR program); and

(d) does not make GHGs "subject to regulation" as defined by Subsection CCC of 20.11.61.7 NMAC.

(3) Except as provided under Subparagraph (c) of Paragraph (2) of Subsection A of 20.11.61.20 NMAC, a major stationary source or a GHG-only source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions applicable to 20.11.61.20 NMAC.

(1) **Actuals PAL *for a major stationary source*** means a PAL based on the *baseline actual emissions* (as defined in Subsection I of 20.11.61.7 NMAC) of all *emissions units* (as defined in Subsection Y of 20.11.61.7 NMAC) at the source, that emit or have the potential to emit the PAL pollutant. **For a GHG-only source, actuals PAL** means a PAL based on the *baseline actual emissions* (as defined in Paragraph (13) of Subsection B of 20.11.61.20 NMAC) of all *emissions units* (as defined in Paragraph (14) of Subsection B of 20.11.61.20 NMAC) at the source, that emit or have the potential to emit GHGs.

(2) **Allowable emissions** means "allowable emissions" as defined in Subsection F of 20.11.61.7 NMAC, except as this definition is modified in accordance with the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in Subsection SS of 20.11.61.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection ZZ of 20.11.61.7 NMAC or in the act, whichever is lower. **For a GHG PAL issued on a CO_2 e basis, small emissions unit** means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO_2 e basis defined as "significant" for the purposes of Paragraph (3) of Subsection CCC of 20.11.61.7 NMAC at the time the PAL permit is being issued.

(4) **Major emissions unit means:**

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(c) For a GHG PAL issued on a CO_2 e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO_2 e basis that would be sufficient for a new source to trigger permitting requirements under Subsection CCC of 20.11.61.7 NMAC at the time the PAL permit is being issued.

(5) **Plantwide applicability limitation (PAL)** means an emission limitation expressed on a mass basis in tons-per-year, or expressed in tpy CO_2 e for a CO_2 e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with 20.11.61.20 NMAC.

(6) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) **PAL effective period** means the period beginning with the PAL effective date and ending 10 years later.

(8) **PAL major modification** means, notwithstanding the definitions for *major modification*, [~~and~~] *net emissions increase* [~~in~~] and *subject to regulation* at Subsections II, PP and CCC of 20.11.61.7 NMAC respectively, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) **PAL permit** means the major [~~new source review~~] NSR permit, the minor [~~new source review~~] NSR permit, or the state operating permit under a program that is approved into the SIP, or the title V permit issued by the department that establishes a PAL for a major stationary source or a GHG-only source.

(10) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is GHGs.

(11) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the *significant level* (as defined in Subsection ZZ of 20.11.61.7 NMAC or in the act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a *major emissions unit* as defined in Paragraph (4) of Subsection B of 20.11.61.20 NMAC. For a GHG PAL issued on a CO_2 e basis, *significant emissions unit* means any emissions unit that emits or has the potential to emit GHGs on a CO_2 e basis in amounts equal to or greater than the amount that would qualify the unit as *small emissions unit* as defined in Paragraph (3) of Subsection B of 20.11.61.20 NMAC, but less than the amount that would qualify the unit as a *major emissions unit* as defined in Subparagraph (c) of Paragraph (4) of Subsection B of 20.11.61.20 NMAC.

(12) **GHG-only source** means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Subsection KK of 20.11.61.7 NMAC and the amount of GHGs on a CO_2 e basis that would be sufficient for a new source to trigger permitting requirements for

GHGs under Subsection CCC of 20.11.61.7 NMAC at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under 20.11.61.20 NMAC.

(13) **Baseline actual emissions *for a GHG PAL*** means the average rate, in tpy CO_2e or tpy GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the administrator for a permit required under 40 CFR 52.21 or by the department for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, *baseline actual emissions for a GHG PAL* means the average rate, in tpy CO_2e or tpy GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (13) of Subsection B of 20.11.61.20 NMAC.

(14) **Emissions unit *with respect to GHGs*** means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of 40 CFR 52.21, there are two types of emissions units as described in the following:

(a) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated;

(b) an existing emissions unit is any emissions unit that does not meet the requirements in Subparagraph (a) of Paragraph (14) of Subsection B of 20.11.61.20 NMAC.

(15) **Minor source** means any stationary source that does not meet the definition of *major stationary source* in Subsection KK of 20.11.61.7 NMAC for any pollutant at the time the PAL is issued.

C. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source or a GHG-only source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subsection M of 20.11.61.20 NMAC.

(4) As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing *major source* as defined in Subparagraphs (a) and (b) of Paragraph (1) of Subsection KK of 20.11.61.7 NMAC or a *GHG-only source* as defined in Paragraph (12) of Subsection B of 20.11.61.20 NMAC.

D. General requirements for establishing PALs.

(1) The department may establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tpy CO_2e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of 20.11.61.20 NMAC.

(c) The PAL permit shall contain all the requirements of Subsection G of 20.11.61.20 NMAC.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of 20.11.61.20 NMAC for each emissions unit under the PAL through the PAL effective period.

(2) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

E. Public participation requirements for PALs. PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of Subsection F of 20.11.61.20 NMAC, the actuals PAL level for a major stationary source or a GHG-only source shall be established as the sum of the

baseline actual emissions (as defined in Subsection I of 20.11.61.7 NMAC or, for GHGs Paragraph (13) of Subsection B of 20.11.61.20 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection ZZ of 20.11.61.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of Subsection F of 20.11.61.20 NMAC, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(3) For CO_2e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs *baseline actual emissions* (as defined in Paragraph (13) of Subsection B of 20.11.61.20 NMAC) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as "significant" on a CO_2e basis for the purposes of Paragraph (3) of Subsection CCC of 20.11.61.7 NMAC at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO_2e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level (in tpy CO_2e) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tpy CO_2e.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source or a GHG-only source owner or operator applies to renew a PAL in accordance with Subsection J of 20.11.61.20 NMAC before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of Subsection I of 20.11.61.20 NMAC.

(6) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection [~~C~~] M of 20.11.61.20 NMAC.

(7) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under Subsection [~~M~~] L of 20.11.61.20 NMAC.

(8) A requirement to retain the records required under Subsection M of 20.11.61.20 NMAC on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of 20.11.61.20 NMAC by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(11) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under Subsection CCC of 20.11.61.7 NMAC as long as the source complies with the PAL.

H. PAL effective period and reopening of the PAL permit.

(1) **PAL effective period.** The PAL effective period shall be 10 years.

(2) **Reopening of the PAL permit.**

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(iii) revise the PAL to reflect an increase in the PAL as provided under [~~Paragraph~~] Subsection K of 20.11.61.20 NMAC.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source or GHG-only source under the plan; and

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related values (AQRV) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of Paragraph (2) of Subsection H of 20.11.61.20 NMAC for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of Subsection E of 20.11.61.20 NMAC.

I. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Subsection J of 20.11.61.20 NMAC shall expire at the end of the PAL effective period, and the requirements in Subsection I of 20.11.61.20 NMAC shall apply.

(1) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in Paragraph (1) of Subsection I of 20.11.61.20 NMAC.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of 20.11.61.20 NMAC, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit, (or each group of emissions units, if such a distribution is more appropriate as decided by the department), by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the

PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of 20.11.61.20 NMAC, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (b) of Paragraph (1) of Subsection I of 20.11.61.20 NMAC, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major [~~new source review~~] NSR requirements if such change meets the definition of major modification in Subsection II of 20.11.61.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection D of 20.11.61.12 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of 20.11.61.20 NMAC.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of 20.11.61.20 NMAC in approving any request to renew a PAL for a major stationary source or a GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) **Application deadline.** A major stationary source or GHG-only source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) **Application requirements.** The application to renew a PAL permit shall contain the following information.

(a) The information required in Subsection C of 20.11.61.20 NMAC.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) **PAL adjustment.** In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraphs (a) and (b) of Paragraph (4) Subsection J of 20.11.61.20 NMAC. However, in no case may any such adjustment fail to comply with Subparagraph (c) of Paragraph 4 of Subsection J of 20.11.61.20 NMAC.

(a) If the emissions level calculated in accordance with Subsection F of 20.11.61.20 NMAC is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of Paragraph (4) of Subsection J of 20.11.61.20 NMAC; or

(b) the department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(c) Notwithstanding Subparagraphs (a) and (b) of Paragraph (4) of Subsection J of 20.11.61.20 NMAC:

(i) if the potential to emit of the major stationary source or GHG-only source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of Subsection K of 20.11.61.20 NMAC, *Increasing a PAL during the PAL effective period*.

(5) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the following provisions.

(a) The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major [~~new source review~~] NSR permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection B of 20.11.61.20 NMAC, regardless of the magnitude of the emissions increase resulting from them, that is, no significant levels apply. These emissions unit(s) shall comply with any emissions requirements resulting from the major [~~new source review~~] NSR process, for example, BACT, even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the

PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of 20.11.61.20 NMAC), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of 20.11.61.20 NMAC.

L. Monitoring requirements for PALs.

(1) **General requirements.**

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time *or CO_2e per unit of time*. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of Subsection L of 20.11.61.20 NMAC and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection L of 20.11.61.20 NMAC, you may also employ an alternative monitoring approach that meets Subparagraph (a) of Paragraph (1) of Subsection L of 20.11.61.20 NMAC if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of 20.11.61.20 NMAC renders the PAL invalid.

(2) **Minimum performance requirements for approved monitoring approaches.** The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of Subsection L of 20.11.61.20 NMAC:

(a) mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

(3) **Mass balance calculations.** An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) **CEMS.** An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable performance specifications found in 40 CFR part 60, Appendix B; and

(b) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(5) **CPMS or PEMS.** An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) **Emission factors.** An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of Subsection L of 20.11.61.20 NMAC, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(a) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) **Revalidation.** All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

M. Recordkeeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of 20.11.61.20 NMAC and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus five years:

(a) a copy of the PAL permit application and any applications for revisions to the PAL; and

(b) each annual certification of compliance pursuant to 20.11.42 NMAC, *Operating Permits*, and the data relied on in certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with 20.11.42 NMAC, *Operating Permits*. The reports shall meet the following requirements.

(1) **Semi-annual report.** The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (expressed on a mass-basis in tons/year, or expressed in tpy CO_2 e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of 20.11.61.20 NMAC.

(c) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding six-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of 20.11.61.20 NMAC.

(g) A signed statement by the responsible official as defined by 20.11.42.7 NMAC certifying the truth, accuracy, and completeness of the information provided in the report.

(2) **Deviation report.** The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official as defined by 20.11.42.7 NMAC certifying the truth, accuracy, and completeness of the information provided in the report.

(3) **Revalidation results.** The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

O. Transition requirements.

(1) The department may not issue a PAL that does not comply with the requirements of Subsections A through O of 20.11.61.20 NMAC after [~~the administrator has approved regulations incorporating these requirements into the SIP~~] March 3, 2003.

(2) The department may supersede any PAL which was established prior to [~~the date of approval of the SIP by the administrator~~] March 3, 2003 with a PAL that complies with the requirements of Subsections A through O of 20.11.61.20 NMAC.

[20.11.61.20 NMAC - N, 1/23/06; A, 8/30/10; A, 1/10/11; A, 5/13/13]

20.11.61.23 EXCLUSIONS FROM INCREMENT CONSUMPTION:

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

(1) concentrations attributable 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 Section 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;

(2) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of 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;

(3) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(4) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(5) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the administrator as meeting the criteria specified in Subsection D of 20.11.61.23 NMAC.

B. If the plan provides that the concentrations to which Paragraph (1) or (2) of Subsection A of 20.11.61.23 NMAC refers, shall be excluded, it shall also provide that no exclusion of such concentrations shall apply more than five years after the effective date of the order to which Paragraph (1) of Subsection A of 20.11.61.23 NMAC refers, or the plan to which Paragraph (2) of Subsection A of 20.11.61.23 NMAC refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

C. [Reserved]

D. For purposes of excluding concentrations pursuant to Paragraph (5) of Subsection A of 20.11.61.23 NMAC, the administrator may approve a plan revision that:

(1) specifies the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur such time is not to exceed 2 years in duration unless a longer time is approved by the administrator.

(2) specifies that the time period for excluding certain contributions in accordance with Paragraph (1) of Subsection D of 20.11.61.23 NMAC, is not renewable;

(3) allows no emissions increase from a stationary source which would:

(a) impact a class I area or an area where an applicable increment is known to be violated; or

(b) cause or contribute to the violation of a [~~national ambient air quality standard~~] NAAQS;

(4) requires limitations to be in effect the end of the time period specified in accordance with Paragraph (1) of Subsection D of 20.11.61.23 NMAC, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

[20.11.61.23 NMAC - Rp, 20.11.61.21 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.61.24 SOURCES IMPACTING FEDERAL CLASS I AREAS - ADDITIONAL REQUIREMENTS:

A. Notice to EPA. 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. The complete permit application shall be transmitted within 30 days of receipt and 60 days prior to any public hearing on the application. The department shall include all relevant information in 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 (~~]AQRV[~~)~~]. This consideration shall include visibility, if such analysis is received within 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 30 days from the date the department receives a request for a pre-application meeting from a proposed source subject to 20.11.61 NMAC. 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 20.11.61.21 NMAC 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~~] AQRV, 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 manager's 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.

B. 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 affect federal 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 20.11.61.21 NMAC and shall make available to them any materials used in making that determination. The department shall include a provision for a 60 day comment period for the federal land managers before any public hearing on a permit application is held.

C. Denial - impact on AQRV: The federal land [~~managers~~] manager of any such lands may demonstrate to the department that the emissions from a proposed source or modification would have an adverse impact on [~~air quality related values~~] the AQRV (including visibility), of [~~any federal class I~~] those lands, [~~under their jurisdiction. This may be done even though~~] notwithstanding that the change in air quality resulting from emissions from [~~the~~] such proposed source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a federal class I area. If the department concurs with [~~this~~] such demonstration, then the source shall not be issued a permit.

D. 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~~] such proposed source or modification would have no adverse impact on [~~air quality related values~~] the AQRV of any such lands (including visibility), [~~of federal class I area under his or her jurisdiction. This may be done even though~~] notwithstanding that 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 federal 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~~]: *provided,* that the applicable requirements are otherwise met, issue the permit with such emission limitations [~~must be included in the permit~~] as may be necessary to assure that emissions of sulfur dioxide, [~~particulate matter,~~] $PM_{2.5}$, PM_{10} and oxides of nitrogen would not exceed the maximum allowable increases over minor source baseline concentrations for such pollutants, as shown in Table 5 of 20.11.61.30 NMAC.

E. For the case where the federal land manager does not perform an impact analysis with respect to visibility impairment in a federal class I area, the department may perform such an analysis. The department shall not issue the source a permit if the department determines that an adverse impact on visibility would occur. The adverse impact must be due, primarily, to the operation of the proposed source or modification.

F. Sulfur dioxide waiver by governor with FLM concurrence: The owner or operator of a proposed major stationary source or major modification, which cannot be approved under Subsection D of [~~20.11.61.23~~] 20.11.61.24 NMAC, may demonstrate to the governor that the source or modification cannot be constructed by reason of [~~an exceedance of a~~] any maximum allowable increase for [~~a federal class I area for~~] sulfur dioxide for a period of 24 hours or less [~~The owner or operator may also demonstrate~~] applicable to any class I area and, in the case of federal mandatory class I areas, that a waiver from this requirement would not adversely affect the [~~air quality related values~~] AQRV of the [~~federal class I~~] area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) 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 owner or operator of the source or modification. Any owner or operator of a source or modification who obtains a permit under 20.11.61 NMAC shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases of ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of 20.11.61.31 NMAC for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period.

G. 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 president may approve the governor's recommendation if he finds that the waiver is in the national interest. If the waiver is approved, the department shall issue the permit. Any source or modification that obtains a permit under 20.11.61 NMAC shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases in ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of 20.11.61.31 NMAC for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period.

[20.11.61.24 NMAC - Rp, 20.11.61.22 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

20.11.61.27 TABLE 2 - SIGNIFICANT EMISSION RATES:

POLLUTANT		EMISSION RATE (TONS/YR)
Carbon monoxide		100
Fluorides		3
Lead		0.6
Municipal waste combustor:		
	Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
	Metals (measured as particulate matter)	15 (14 megagrams/year)

	Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)
Municipal solid waste landfill emissions (measured as NMOC)		50 (45 megagrams/year)
Nitrogen oxides		40
Ozone		40 VOC or NOx
Particulate Matter:		
	Particulate matter emissions	25
	PM_{10} emissions	15
	$PM_{2.5}$ emissions	10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under Subsection WW of 20.11.61.7 NMAC
Sulfur compounds		
	Hydrogen sulfide (H_2S)	10
	Reduced sulfur compounds (incl. H_2S)	10
	Sulfur dioxide	40
	Sulfuric acid mist	7
	Total reduced sulfur (incl. H_2S)	10
Any other regulated [~~new source review~~] NSR pollutant that is not listed in this table		Any emission rate
Each regulated pollutant		Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any Class I Federal area located within 10 km of the source.

[20.11.61.27 NMAC - Rp, 20.11.61.24 NMAC, 1/23/06; A, 8/30/10; A, 1/10/11; A, 5/13/13]

20.11.61.29 TABLE 4 - ALLOWABLE PSD INCREMENTS:

Pollutant Class I	**Maximum allowable increase** micrograms per cubic meter ($\mu g/m^3$)		
	Class II	**Class III**	
Nitrogen Dioxide			
annual arithmetic mean	2.5	25	50
Particulate Matter			
$PM_{2.5}$, annual arithmetic mean	1	4	8
$PM_{2.5}$, 24-hour maximum	2	9	18
PM_{10}, annual arithmetic mean	4	17	34
PM_{10}, 24-hour maximum	8[a]	30[a]	60[a]
Sulfur Dioxide			
annual arithmetic mean	2	20	40
24-hour maximum	5[a]	91[a]	182[a]
3-hour maximum	25[a]	512[a]	700[a]
a - Not to be exceeded more than once a year.			

[20.11.61.29 NMAC - Rp, 20.11.61.26 NMAC, 1/23/06; A, 5/15/06; A, 8/30/10; A, 5/13/13]

20.11.61.30 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I VARIANCES:

Pollutant	**Maximum allowable increase** Micrograms per cubic meter ($\mu g/m^3$)
Nitrogen Dioxide	

	annual arithmetic mean	25
Particulate Matter		
	$PM_{2.5}$, annual arithmetic mean	4
	$PM_{2.5}$, 24-hour maximum	9
	PM_{10}, annual arithmetic mean	17
	PM_{10}, 24-hour maximum	30
Sulfur Dioxide		
	annual arithmetic mean	20
	24-hour maximum	91
	3-hour maximum	325

[20.11.61.30 NMAC - N, 1/23/06; A, 8/30/10; A, 5/13/13]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.1 NMAC, Section 7 and Section 9, effective May 1, 2013. In 15.2.1.7 NMAC, Subsections A through S and Subsections U through Z were not published as there were no changes. In 15.2.1.9 NMAC, Subsections A and C were not published as there were no changes.

15.2.1.7 DEFINITIONS:

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T. DEFINITIONS BEGINNING WITH THE LETTER "T":

(1) "Takeout" is the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or rule.

(2) "Therapeutic medication" is any drug, chemical, or chemical agent, that when administered to a horse is calculated to improve [~~and/or~~] or protect the health and soundness of said horse. The promotion of formful racing performance is the intent of administering a therapeutic medication.

(3) "Totalisator" is the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds and payout prices to patrons at a pari-mutuel wagering facility.

(4) "Trainer" is a person who holds a valid trainer's license and who has a horse eligible to race under his care, custody, or control at the time entry is made.

[~~(4)~~] (5) "Trial race" is part of a series of races in which horses participate for the purpose of determining eligibility for a subsequent race.

[~~(5)~~] (6) "Tubing" is the administration of any substance via a naso-gastric tube.

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[15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 03/15/2001; A, 02/14/2002; A, 08/30/2007; A, 12/1/2010; A, 01/01/2013; A, 05/01/2013]

15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

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B. PROCEEDINGS BEFORE THE STEWARDS:

(1) Rights of the licensee. A person who is the subject of the disciplinary hearing conducted by the stewards is entitled to: proper notice of all charges; confront the evidence presented including: the right to counsel at the person's expense; the right to examine all evidence to be presented against [~~him/her~~] them; the right to present a defense; the right to call witnesses; the right to cross examine witnesses; and waive any of the above rights.

(2) Complaints.

(a) On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the stewards may conduct an inquiry and disciplinary hearing regarding the licensee's actions.

(b) A complaint made by someone other than the stewards must be in writing and filed with the stewards not later than 72 hours after the action that is the subject of the complaint.

(c) In case of a notice from the state of New Mexico human services department that a licensee is in non-compliance with the Parental Responsibility Act, the licensee shall be notified by the board of stewards. Thereafter the licensee shall have [~~thirty (30)~~] 30 days to provide documentation of compliance to the board of stewards and failure to do so will result in the suspension of the licensee's license.

(3) Summary suspension.

(a) If the stewards determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards may summarily suspend the license pending a hearing.

(b) A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third day after the license was summarily suspended. The licensee may waive [~~his or her~~] their right to a hearing on the summary suspension within the three-day limit.

(c) The stewards shall conduct a hearing on the summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

(d) If a positive test arises in a trial race, the horse is eligible for entry during the period the split is tested and reported to the commission. If the report confirms a positive test, the horse is disqualified from both the trial and the race for which the trial was conducted.

(4) Notice.

(a) Except as provided by these rules regarding summary suspension, jockey riding infractions and trial races, the stewards shall provide written notice, at least 10 days before the hearing, to a person who is the subject of a disciplinary hearing. The person may waive [~~his or her~~] their right to 10 days notice by executing a written waiver.

(b) Notice given under this section must include: a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes or rules involved; a short, plain description of the alleged conduct that has given rise to the disciplinary hearing; the possible penalties that may be imposed.

(c) If possible, the stewards or their designee shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the stewards shall forthwith mail the notice to the person's last known address, as found in the commission's