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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:

Pollutant	Averaging Time				
	Annual	24-hr	8-hr	3-hr	1-hr
Sulfur Dioxide	1.0 μg/m^3	5 μg/m^3	--	25 μg/m^3	--
$PM_{2.5}$	0.3 μg/m^3	1.2 μg/m^3	--	--	--
PM_{10}	1.0 μg/m^3	5 μg/m^3	--	--	--
Nitrogen Dioxide	1.0 μg/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]