TITLE 20 ENVIRONMENTAL PROTECTION

CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

PART 72 CUMULATIVE EFFECTS

20.11.72.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board, P.O. Box 1293 Albuquerque, New Mexico 87102.

20.11.72.2 SCOPE: This Part applies to all persons who intend to construct or modify a source or apply for an operating permit, except as otherwise provided by this Part or the New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances.

20.11.72.3 STATUTORY AUTHORITY: This Part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-4, 74-2-5(C); the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque, 1994 § 9-5-1-4.

20.11.72.4 DURATION: Permanent.

20.11.72.5 EFFECTIVE DATE: The effective date of this Part shall be January 1, 2015.

20.11.72.6 OBJECTIVE: This Part ensures that any proposal to construct, modify or operate a source disclose, analyze and evaluate the cumulative effects of air pollution to ensure that air pollution does not disproportionately affect the environment or public health in any neighborhood, census tract, or region of Albuquerque or Bernalillo County.

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

A. "California Cancer or Reproductive Toxicity Chemicals List" means the State of California List of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity.

B. "Criteria Air Pollutants" means the air pollutants for which there are national ambient standards provided for in 40 C.F.R. Part 50.

C. "Cumulative Effects" or "Cumulative Impacts" means the public health and environmental effects in a geographic area or population group from all air contamination sources, including contaminants from all emissions and discharges, whether single or multi-media, routinely, accidentally or otherwise released, and including emissions from past, present and all reasonably foreseeable emissions or discharges.

Exhibit A

D. "Disproportionate Impact" means environmental or public health impacts on low-income or minority communities from air contaminants that are unreasonably or unfairly high when compared to more affluent or non-minority communities.

E. "Hazardous Air Pollutants" means those air pollutants designated pursuant to 40 C.F.R. Part 63.

F. "Low-income Communities" or "Low-income Neighborhoods" means a census tract, as defined in the United States Census Bureau's Geographic Areas Reference Manual, where 51% or greater of the population in that census tract has an income at or below 150% of the Federal poverty level.

G. "Minority Community" or "Minority Neighborhood" means a census tract, as defined in the United States Census Bureau's Geographic Areas Reference Manual, where 51% or greater of the population of that census tract is Hispanic/Latino, Asian, Pacific Islander, African-American, Native American, Native Alaskan or any combination thereof.

20.11.72.8 CUMULATIVE IMPACTS ANALYSIS: Evaluation of the cumulative effects of air pollution is intended to enable the Board and the Department to develop a full understanding of the current and future effects of their actions on the ecosystems and human communities in Bernalillo County and the City of Albuquerque and evaluate and recognize the differences, needs, requirements and conditions within the County and parts thereof.

A. For every application for a permit under the Air Quality Control Act, NMSA 1978, 74-2-1 *et. seq.*, the Board or Department shall prepare or cause to be prepared a cumulative impact analysis.

B. A cumulative impact analysis shall contain the following:

(1) Twelve (12) consecutive months of air quality monitoring data for existing Criteria Air Pollutants, Hazardous Air Pollutants, and air pollution emissions for chemicals on the California Cancer or Reproductive Toxicity Chemicals List, within a five (5) mile radius of the proposed project using methods consistent with 40 C.F.R. parts 51, 60, 61, 63 and 75 and approved by the Department;

(2) An estimate, based on anticipated operations and emissions control technology, of the proposed project's emissions added to the past, present and reasonably foreseeable future effects of all other actions within a five mile radius of the proposed project;

(3) Disclosure and analysis of the public health impacts, including the impacts on vulnerable subpopulations including, but not limited to, children, pregnant women, and the elderly, of the proposed project's emissions added to the past, present and reasonably foreseeable emissions within a five mile radius of the project;

(4) Any cumulative effects analysis must disclose all gaps in data and uncertainties. Disclosure must include not only identification of the data gaps and uncertainties,

but also an evaluation of how those data gaps and uncertainties affect the cumulative impacts analysis and any conclusions drawn;

(5) Disclosure of whether the cumulative impacts will have a disproportionate impact on a low-income community or minority community;

(6) Alternatives to the proposed action, including denying a permit for the proposed action, and an evaluation of the cumulative effects of each such alternative;

(7) Disclosure and evaluation of all feasible measures to mitigate the cumulative effects of the proposed project.

C. If the Board or Department does not prepare the cumulative impacts analysis, that cumulative impacts analysis shall be prepared by an independent third party contractor, selected from a list of contractors pre-approved by the Board, and the applicant shall bear the cost of preparing the cumulative impacts analysis.

20.11.72.9 NOTICE--OPPORTUNITY TO COMMENT--AVAILABILITY TO LEGISLATURE AND GENERAL PUBLIC.--

A. Whenever the Department or Board determines that a cumulative impact statement should be prepared for a project, notice of the impact statement shall be:

(1) provided by certified mail to the owners of record, as shown by the most recent property tax schedule, of all properties within one hundred feet of the property on which the project or proposed project is located or proposed to be located;

(2) published once in a newspaper of general circulation in each county in which the property on which the project is proposed to be constructed, operated or closed is located. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in English, Spanish and any other language spoken by a significant portion of the community affected by the proposed project; and

(3) posted in at least four publicly accessible and conspicuous places, including the project entrance on the property on which the project is or is proposed to be located.

B. Any member of the general public may request a copy of an impact statement by requesting a copy from the Department. Upon receiving a request for a copy of an impact statement, the Department shall either provide the requestor with a copy of the impact statement within fifteen days of receiving the request or direct the requestor to a publicly available copy.

C. The requirements of this Section represent minimum notice requirements. The Board may, by regulation, impose additional notice procedures consistent with existing law.

20.11.72.11 EXEMPTIONS.--Exempted from the provisions of the Cumulative Impacts Ordinance are:

A. Enforcement activities;

B. Emergency activities to protect public health, safety or the environment;

C. Purely ministerial actions;

D. Actions subject to the National Environmental Policy Act of 1969 and its implementing regulations, except that the Board shall review the Federal agency's or agencies' final action under the National Environmental Policy Act and may require additional information and evaluation on a project or proposed project before approving any permits, licenses, or authorizations required under this Part.

20.11.72.12 ENFORCEMENT--COMMENCEMENT OF ACTIONS OR PROCEEDINGS.--

A. Any person having an interest that is or may be adversely affected by a project or proposed project may commence a civil action on that person's own behalf to compel compliance with this Part.

B. No person shall commence an action pursuant to this section prior to sixty (60) days after giving written notice to the Department and permit applicant; provided, however, when the violation or order complained of constitutes an immediate threat to the health or safety of the plaintiff or would immediately and irreparably impair a legal interest of the plaintiff, an action pursuant to this section may be brought immediately after notification of the proper parties.

C. Except as otherwise provided herein, suits against the Department or proposed project's applicant shall be brought in the district court of Bernalillo County.

D. The court, in issuing a final order in an action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees, to a party whenever the court determines such award is appropriate.

20.11.72.13. ADMINISTRATIVE APPEALS ---JUDICIAL REVIEW.--

A. Any person who is adversely affected by a project or proposed project subject to this Part or who participated in a permitting action before the Department and who is adversely affected by such action may appeal to the Board for further relief pursuant to 20.11.81.1 *et. seq.*

B. Any person who is adversely affected by a final decision of the Board or who participated in an appeal to the Board of a Department decision and who is adversely

affected by such an action may appeal the Board's final decision to the court of appeals pursuant to NMSA 1978, § 74-2-9.

20.11.72.14. SEVERABILITY.--If any part or application of this Part is held invalid, the remainder or its application to other situations or persons shall not be affected.