

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 60 PERMITTING IN NONATTAINMENT AREAS

20.11.60.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[4/25/85. . .12/1/95; 20.11.60.1NMAC – Rn, 20 NMAC 11.60.I.1, 10/1/02]

20.11.60.2 SCOPE:

A. This Part establishes a pre-construction permit program for new major stationary sources and major modifications at existing major stationary sources located in nonattainment areas.

B. Exempt: This Part does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.
[12/1/95; 20.11.60.2 NMAC – Rn, 20 NMAC 11.60.I.2, 10/1/02]

20.11.60.3 STATUTORY AUTHORITY: This Part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.
[4/24/90. . .12/1/95; 20.11.60.3 NMAC – Rn, 20 NMAC 11.60.I.3, 10/1/02]

20.11.60.4 DURATION: Permanent.
[12/1/95; 20.11.60.4 NMAC – Rn, 20 NMAC 11.60.I.4, 10/1/02]

20.11.60.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.
[12/1/95; 20.11.60.5 NMAC – Rn, 20 NMAC 11.60.I.5 & A, 10/1/02]

20.11.60.6 OBJECTIVE: The objective of this Part is to implement a pre-construction permit program for new or modified major stationary sources that wish to locate in an area where federal ambient air quality standards are being exceeded.
[4/25/85. . .12/1/95; 20.11.60.6 NMAC – Rn, 20 NMAC 11.60.I.6, 10/1/02]

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 this Part shall govern.

A. “Actual Emissions” means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following:

(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 two-year period, which precedes the particular date and which is representative of normal source operation. A different time period shall be allowed upon a determination by the Department 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 the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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

B. “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 at 40 CFR 51.301 Definitions.

C. “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 set forth in 40 CFR Part 60, 61, or 63,
- (2) any applicable State Implementation Plan emissions limitation including those with a future compliance date, or
- (3) the emissions rate specified as federally enforceable permit condition, including those with a future compliance date.

D. “Begin Actual Construction” means, in general, initiation of physical on-site construction activities on an emissions unit which is of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipe work 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.

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

F. “Commence” as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary pre-construction 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 canceled 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.

G. “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.

H. “Emission Unit” means any part of a stationary source, which emits or would have the potential to emit any regulated pollutant.

I. “Federal Class I Area” means any Federal land that is classified or reclassified "Class I".

J. “Federal Land Manager” means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

K. “Federally Enforceable” means all limitations and conditions, which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60, 61, and 63, requirements within any applicable State Implementation Plan, or 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.

L. “Fugitive Emissions” means those emissions, which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

M. “Lowest Achievable Emission Rate” 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.

N. “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 significant net emissions increase of any regulated pollutant for which the stationary source is already major.
- (2) Any net emissions increase that is considered significant for VOC 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 Sections 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 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 regulation or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166, or
 - (ii) the source is approved to use under any permit issued under this Part.
 - (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 regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166,
 - (g) any change in ownership at a stationary source,
- (4) A modification shall not be a major modification due to secondary emissions.
- (5) A modification shall not be a major modification due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:
 - (a) any category in Table 2, or
 - (b) any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

O. “Major Stationary Source” means:

- (1) any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated pollutant subject to regulation under the Act, or
- (2) any physical change that would occur at a stationary source not qualifying under Paragraph (1), of Subsection O of 20.11.60.7 NMAC as a major stationary source if the change would constitute a major stationary source by itself.
- (3) A major stationary source that is major for VOC shall be considered major for ozone.
- (4) A stationary source shall not be a major stationary source due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:
 - (a) any category in Table 2, or
 - (b) any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.
- (5) A stationary source shall not be a major stationary source due to secondary emissions.

P. “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.

Q. “Natural Conditions” includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

R. “Necessary Pre-construction 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.

S. “Net Emissions Increase” means the amount by which the sum of the following exceeds zero:

- (1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
- (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 before construction on the particular change commences, and
 - (b) the date that the increase from the particular change occurs.
- (3) An increase or decrease in actual emissions is creditable only if neither the Department nor the Administrator has relied on it in issuing a permit for the source under this regulation and, for a decrease, the

Administrator has not relied on it in issuing a permit under 40 CFR 52.21, 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 federally enforceable at and after the time that actual construction of the particular change begins,

(c) it has not been relied on in any Albuquerque/Bernalillo County air quality permit and has not been relied on by the Department 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.

T. “Nonattainment Area” means: for any regulated pollutant, an area which is designated "nonattainment" with respect to that pollutant within the meaning of section 107(d) of the Federal Clean Air Act.

U. “Portable Stationary Source” means a source, which can be relocated to another operating site with limited dismantling and reassembly.

V. “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.

W. “Reasonable Further Progress” means such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D of the Act or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.

X. “Regulated Pollutant” means any air pollutant, the emission or ambient concentration of which is regulated pursuant to the Act.

Y. “Secondary Emissions” means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Part, 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.

Z. “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:

<u>Pollutant</u>	<u>Emissions Rate</u>
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
PM ₁₀ emissions:	15 tpy
Ozone:	40 tpy of VOCs
Lead:	0.6 tpy

AA. “Stationary Source” means any building, structure, facility, or installation, which emits or may emit any regulated pollutant.

BB. “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.

CC. “Visibility Impairment” means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

DD. “Volatile Organic Compound (VOC)” means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the Administrator designates as having negligible photochemical reactivity.
[4/25/85; .3/16/89, 2/26/93, 12/1/95; 20.11.60.7 NMAC – Rn, 20 NMAC 11.60.I.7, 10/1/02]

20.11.60.8 VARIANCES: [Reserved]
[12/1/95; 20.11.60.8 NMAC – Rn, 20 NMAC 11.60.I.8, 10/1/02]

20.11.60.9 SAVINGS CLAUSE: Any amendment to 20.11.60 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation 32, or 20.11.60 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.
[12/1/95; 20.11.60.9 NMAC – Rn, 20 NMAC 11.60.I.9, 10/1/02]

20.11.60.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.
[12/1/95; 20.11.60.10 NMAC – Rn, 20 NMAC 11.60.I.10, 10/1/02]

20.11.60.11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.
[12/1/95; 20.11.60.11 NMAC – Rn, 20 NMAC 11.60.I.11 & A, 10/1/02]

20.11.60.12 SOURCE OBLIGATION:

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 this Part prior to the start of construction or modification if either of the following conditions applies:

(1) the major stationary source or major modification will be located within a nonattainment area so designated pursuant to Section 107 of the CAA and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment, or

(2) the major stationary source or major modification will be located within an area designated attainment or unclassifiable pursuant to Section 107 of the CAA and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant would exceed any of the significance levels in Table 1 at any location that does not meet any national ambient air quality standard for the same pollutant. (See Subsection D. of 20.11.60.12 NMAC)

B. The requirements of this Part apply to each regulated pollutant meeting the criteria of either Paragraph (1) or (2), of Subsection A. of 20.11.60.12 NMAC.

C. For an area, which is nonattainment for ozone, volatile organic compounds are the regulated pollutant, which may make this Part applicable under the provisions of Paragraph (1), of Subsection A. of 20.11.60.12 NMAC.

D. A new major stationary source or major modification, which meets the criteria of Paragraph (2), of Subsection A. of 20.11.60.12 NMAC shall demonstrate that the source or modification will not cause or contribute to a violation of any National Ambient Air Quality Standard by meeting the following requirements and no others of this Part:

- (1) Paragraph (2), of Subsection C. of 20.11.60.14 NMAC, regarding emission offsets,
- (2) Subsection D. of 20.11.60.14 NMAC, regarding a net air quality benefit,
- (3) 20.11.60.16 NMAC, Emission Offset Baseline,
- (4) 20.11.60.17 NMAC, Emission Offset, and
- (5) 20.11.60.19 NMAC, Air Quality Benefit.

E. In addition to the requirements of Subsection D. of 20.11.60.12 NMAC, a new source or modification which meets the criteria of Subparagraph (a), of Paragraph (2), of Subsection A. of 20.11.60.12 NMAC and is also a major stationary source or major modification as defined in 20.11.61 NMAC, Prevention of Significant Deterioration (PSD), shall obtain a PSD permit under the provisions of 20.11.61NMAC.

F. The requirements of this part shall apply as though construction had not yet commenced at the time that a source or modification becomes a major source or major modification solely due to a relaxation in any enforceable limitation established after August 7, 1980.

G. The issuance of a permit by the Department shall not relieve any owner or operator of the responsibility to comply with the provisions of the Albuquerque/Bernalillo County ordinances adopted pursuant to 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.

H. 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 this Part shall be subject to enforcement action.

I. 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.

J. 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.

K. If the owner or operator previously issued a permit under this Part applies for an extension as provided for under Subsection I. of 20.11.60.12 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.

[4/25/85 . . 3/16/89; 12/1/95; 20.11.60.12 NMAC – Rn, 20 NMAC 11.60.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.60.II.1; 10/1/02]

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

A. A description of the nature, location, design capacity, and typical operating schedule of the major stationary source or major modification, including specifications and drawings showing the design and plant layout; and

B. A detailed schedule for construction of the major stationary source or major modification; and

C. A detailed description of the planned system of continuous emission reduction to be implemented, emission estimates, and other information necessary to demonstrate that the lowest achievable emission rate or any other applicable emission limitation will be maintained.

[4/25/85. . .12/1/95; 20.11.60.13 NMAC – Rn, 20 NMAC 11.60.II.2; 10/1/02]

20.11.60.14 SOURCE REQUIREMENTS: In order for a permit to be granted, all of the following conditions shall be met;

A. The major stationary source or major modification shall be designed such that the lowest achievable emission rate (LAER) will be met and maintained for each pollutant emitted which is subject to this Part;

B. The owner or operator of the proposed new or modified source has demonstrated that all existing major stationary sources owned or operated by such person (or any entity controlling, controlled by, or under common control with such person) in New Mexico are in compliance with, or on a schedule for compliance with, all applicable emission limitations and standards, under the CAA, and all conditions in a federally enforceable permit;

C. Emissions Reductions:

(1) Emissions reductions (offsets) at existing sources shall occur prior to or concurrent with the start of operation of the proposed major stationary source or major modification for each pollutant emitted which is subject to this Part. As a general rule, such offsets shall be at least 20 percent greater than the allowable emissions of the proposed new major stationary source or major modification, and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the new or modified source shall be offset by an equal or

greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. An offset less than 20 percent, but greater than one-to-one, may be allowed if reasonable progress toward attainment of the applicable national ambient air quality standards (NAAQS) will be achieved. A higher level of offset reduction may be required in order to demonstrate that a net air quality benefit will occur; or

(2) A new major stationary source or major modification which is subject to the requirements of Subsection D. of 20.11.60.12 NMAC shall obtain sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major stationary source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.

D. Emission offsets shall provide a net air quality benefit in the area where the national ambient air quality standard for that pollutant is violated; and

E. The owner or operator of the proposed major stationary source or major modification has submitted with the application the analysis conducted relative to alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrate that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

F. The proposed major stationary source or major modification will meet all applicable emission requirements in the New Mexico State Implementation Plan, any applicable new source performance standard in 40 CFR Part 60, and any national emission standard for hazardous air pollutants in 40 CFR Part 61, and 63. [4/25/85. . . 3/16/89; 2/26/93; 12/1/95; 20.11.60.14 NMAC – Rn, 20 NMAC 11.60.II.3; 10/1/02]

20.11.60.15 ADDITIONAL REQUIREMENTS FOR SOURCES: SOURCES IMPACTING MANDATORY FEDERAL CLASS I AREAS.

A. The requirements of this section apply only to proposed major stationary sources or major modifications that meet the criteria of Paragraph (1), of Subsection A. of 20.11.60.12 NMAC and that also are major stationary sources or major modifications as defined in 20.11.61 NMAC. A major stationary source or major modification which meets the criteria of Paragraph (2), of Subsection A of 20.11.60.12 NMAC may be subject to requirements for Federal Class I Areas in 20.11.61 NMAC if that Part applies.

B. The Department shall transmit to the Administrator and any affected Federal Land Manager a copy of each permit application and any information relevant to any proposed major stationary source or major modification which may have an impact on visibility in any mandatory Federal Class I area. Relevant information will include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The application shall be transmitted within thirty (30) days of receipt by the Department and at least sixty (60) days prior to any public hearing on the application. Additionally, the Department shall notify any affected Federal Land Manager within thirty (30) days from the date the Department receives a request for a pre-application meeting from a proposed source subject to this Part. The Department shall consult with the affected Federal Land Manager prior to making a determination of completeness for any such permit application. The Department shall also provide the Federal Land Manager and the Administrator with a copy of the preliminary determination on the permit application and shall make available to them any materials used in making that determination.

C. The owner or operator of any proposed major stationary source or major modification which may have an impact on visibility in a mandatory Federal Class I area shall include in the permit application an analysis of the anticipated impacts on visibility in such areas.

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

(1) visibility monitoring methods specified by the Department shall be reasonably available and not require any research and development, and

(2) both pre-construction and post construction visibility monitoring may be required. In each case, the duration of such monitoring shall not exceed one year.

E. The Department shall consider any analysis with respect to visibility impacts provided by the Federal Land Manager if it is received within thirty (30) days from the date a complete application is given to the Federal Land Manager. In any case where the Department disagrees with the Federal Land Manager's analysis, the Department shall either explain its decision to the Federal Land Manager or give notice 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 means of an 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.

D. In making its determination, as to whether or not to issue a permit, the Department shall ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal of preventing any future impairment of visibility in mandatory Federal Class I areas. The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

[4/25/85. . .3/6/89; 2/26/93; 12/1/95; 20.11.60.15 NMAC – Rn, 20 NMAC 11.60.II.4; 10/1/02]

20.11.60.16 EMISSIONS OFFSET BASELINE: The baseline for determining credit for emission offsets shall be the most stringent emissions limitation pursuant to a Board Regulation, a state air quality control regulation or federally enforceable permit, which is applicable and in effect at the time the application to construct is filed. If neither a local or state air quality control regulation nor a federally enforceable permit contains an emission limitation for the source, the baseline shall be the actual emissions of the source from which offset credit is obtained. Where a source is subject to an emission standard established in a federal New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) and a different state implementation plan or permit limitation, including any emission limitation used in demonstrating reasonable further progress, the more stringent emission standard shall be used as the baseline for determining credit for emission offsets.

[4/25/85. . .12/1/95; 20.11.60.16 NMAC – Rn, 20 NMAC 11.60.II.5; 10/1/02]

20.11.60.17 EMISSIONS OFFSETS: All emission offsets approved by the Department shall meet the following criteria:

A. All emissions reductions claimed, as offset credit shall be from decreases of the same pollutant for which the offset is required.

B. 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.

C. For the case where emission reductions claimed as offset credit occur at the source subject to this Part, such reductions shall be a condition required by a federally enforceable permit. For the case where emission reductions claimed as offset credit occur at a neighboring source, such reductions shall be incorporated as modifications to pertinent federally enforceable permits held by the neighboring source. If the neighboring source has no relevant permits, the reductions shall be approved as a revision to the State Implementation Plan by the Board.

D. Offset credit for any emissions reduction can be claimed only to the extent that the Department or EPA has not relied on it in previously issuing any permit or in demonstrating attainment or reasonable further progress.

E. No emissions reduction credit shall be allowed for replacing one volatile organic compound with another of lesser reactivity, except as approved by the U.S. Environmental Protection Agency's reactivity guidance found in 42 Federal Register 35314, (1977), and any amendments thereto.

F. Emission reduction credit may be allowed for a source permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified of the curtailment.

G. Where the most stringent emissions limit which is applicable allows greater emissions than the potential to emit of the offsetting source, emission offset credit will be allowed only for control below the potential to emit of the source.

H. The emission limit for determining emission offset credit involving an existing fuel combustion source shall be the most stringent emission standard which is applicable for this source for the type of fuel being burned at the time the permit application is filed. If the existing source commits to switch to a cleaner fuel, emission offset credit based on the difference between the allowable emissions of the fuels involved shall be acceptable only if an alternative control measure, which would achieve the same degree of emissions reduction should the source switch back to a fuel which produces more pollution, is specified in a permit issued by the Department.

I. 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.

J. Source shutdowns and curtailments in production or operating hours may be used for emission offset credit only if they occur after August 7, 1977 or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source for which the offset is to apply is a replacement for the shutdown or curtailment.

[4/25/85. . .2/26/93; 12/1/95; 20.11.60.17 NMAC – Rn, 20 NMAC 11.60.II.6; 10/1/02]

20.11.60.18 BANKING OF EMISSION REDUCTION:

A. Any stationary source which decreases actual emissions of a regulated pollutant in excess of the requirements of this Part or any other applicable air quality control regulation or permit emission limitation may preserve or bank such excess emission reductions for a sale or future use.

B. The owner or operator desiring to preserve such reductions shall submit a written request prior to the actual emission reduction to the Department, which contains the following information:

- (1) a detailed description of the process(es) 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(s) of such reductions.

C. The Department shall:

- (1) verify the amount of emission reduction claimed in the written request, and
- (2) approve or deny the request for banking of the emission reduction and notify the applicant in writing of the decision, and
- (3) keep appropriate records of any emission reduction accepted for banking, and
- (4) for the case where emission reductions are approved in excess of those required for obtaining a permit under this Part, the Department shall make such reductions a condition of the permit, and
- (5) for the case where emission reductions are approved not in conjunction with granting a permit, the Department shall preserve such reductions as a State Implementation Plan revision which must be approved by the Board.

D. Use and Sale of Emission Reductions.

(1) The use of any preserved emission reduction is confined to meeting the emission offset requirements of 20.11.60.40 or 41 NMAC.

(2) The provisions of this Part apply to the future use of any preserved emission reduction as if such reductions were obtained concurrently with the commencement or operations of the new or modified source.

(3) Before the use or sale of any preserved emission reduction occurs, written notification must be given to the Department. Such notice shall be in writing and shall identify the permit(s) and State Implementation Plan revisions(s) in which such reductions are preserved. The Department must verify the availability of the preserved reduction before any use or sale occurs.

(4) The use of preserved emission reduction credits is subject to the criteria of 20.11.60.17 NMAC, Emission Offsets.

[4/25/85. . .3/16/89; 2/26/93; 12/1/95; 20.11.60.18 NMAC – Rn, 20 NMAC 11.60.II.7; 10/1/02]

20.11.60.19 AIR QUALITY BENEFIT: All demonstrations of the occurrence of a net air quality benefit shall meet the following criteria:

A. Emission offsets for VOC's or nitrogen oxides emissions impacting an ozone nonattainment area may be obtained from sources located in the broad vicinity of the proposed new source or modification, subject to approval by the Department. Atmospheric dispersion modeling will not be required to demonstrate the net air quality benefit that occurs due to reductions in VOC emissions.

B. An applicant, which proposes emission offsets for sulfur dioxide, particulate matter, carbon monoxide, nitrogen oxides, or any other pollutant may be required by the Department to submit atmospheric dispersion modeling to demonstrate a net air quality benefit will occur. For any case involving these pollutants where stack emissions and fugitive or ground level emissions are offsetting, atmospheric dispersion modeling shall be required to demonstrate a net air quality benefit will occur

[4/25/85. . .12/1/95; 20.11.60.19NMAC – Rn, 20 NMAC 11.60.II.8; 10/1/02]

20.11.60.20 PUBLIC PARTICIPATION AND NOTIFICATION:

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

B. Within 180 days after receipt of a complete application the reviewing authority shall:

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

(2) Make available at the Department a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed major stationary source or major modification would be constructed, of the application, the preliminary determination, and of the opportunity for comment at a public hearing as well as written public comment. The public comment period shall be for forty-five days from the date of such advertisement.

(4) Send a copy of the notice of public comment to the applicant, the Administrator and to officials and agencies having jurisdiction over the location where the proposed construction would occur as follows; The Environmental Improvement Division of the State of New Mexico, any other state control agencies, the chief executives of the City and County, any regional comprehensive land use planning agency, and any state or Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source and other appropriate considerations. Such public hearings shall be held in Bernalillo County.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The Department shall make all comments available for public inspection in the Department's offices.

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

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection in the Department's offices.

[4/25/85; .12/1/95; 20.11.60.20 NMAC – Rn, 20 NMAC 11.60.II.9, 10/1/02]

20.11.60.21 SIGNIFICANT AMBIENT CONCENTRATIONS:

Table 1.

Pollutant	Averaging Time				
	Annual	24 hour	8 hour	3 hour	1 hour
Sulfur Dioxide	1.0 µg/m ³	5 µg/m ³	-	25 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

[4/25/85; 20.11.60.21 NMAC - Rn, 20 NMAC 11.60.Table 1, 10/1/02]

20.11.60.22 FUGITIVE EMISSIONS SOURCE CATEGORIES:

Table 2.

1.	Fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input
2.	Coal cleaning plants (with thermal dryers)
3.	Kraft pulp mills
4.	Portland cement plants
5.	Primary zinc smelters
6.	Iron and steel mill plants
7.	Primary aluminum ore reduction plants
8.	Primary copper smelters
9.	Municipal incinerators capable of charging more than 50 tons of refuse per day.
10.	Hydrofluoric acid plants
11.	Sulfuric acid plants
12.	Nitric acid plants
13.	Petroleum refineries
14.	Lime plants
15.	Phosphate rock processing plants
16.	Coke oven batteries
17.	Sulfur recovery plants
18.	Carbon black plants (furnace process)
19.	Primary lead smelters.
20.	Fuel conversion plants.
21.	Sintering plants.
22.	Secondary metal production plants.
23.	Chemical process plants.
24.	Fossil fuel boiler (or combination thereof) totaling more than 250 million Btu/hr heat input.
25.	Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
26.	Taconite ore processing plants.
27.	Glass fiber processing plants.
28.	Charcoal production plants.

[4/25/85; 20.11.60.22 NMAC - Rn, 20 NMAC 11.60.Table 2, 10/1/02]

HISTORY OF 20.11.60 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records – state records center and archives.

Regulation No. 32, Construction Permits - Nonattainment Areas, 4/25/85;

Regulation No. 32, Construction Permits - Nonattainment Areas, 6/18/86;

Regulation No. 32, Construction Permits - Nonattainment Areas, 3/16/89;

Regulation No. 32, Construction Permits - Nonattainment Areas, 2/26/93.

History of Repealed Material: [Reserved]

Other History: Regulation No. 32, Construction Permits - Nonattainment Areas, filed 2/26/93 was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.60, Permitting In Nonattainment Areas, filed 10/27/95.

20 NMAC 11.60, Permitting In Nonattainment Areas, filed 10/27/95 was **renumbered, reformatted, amended and replaced** by 20.11.60 NMAC, Open Burning, effective 10/1/02.