

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 62 ACID RAIN

20.11.62.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[1/1/96; 20.11.62.1 NMAC – Rn, 20 NMAC 11.62.I.1, 10/1/02]

20.11.62.2 SCOPE:

A. This part is applicable to sources affected by the Federal Acid Rain Program. These requirements herein are to be implemented through the Acid Rain Portion of the operating permit.

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.
[1/1/96; 20.11.62.2 NMAC – Rn, 20 NMAC 11.62.I.2, 10/1/02]

20.11.62.3 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.
[1/1/96; 20.11.62.3 NMAC – Rn, 20 NMAC 11.62.I.3, 10/1/02]

20.11.62.4 DURATION: Permanent.
[1/1/96; 20.11.62.4 NMAC – Rn, 20 NMAC 11.62.I.4, 10/1/02]

20.11.62.5 EFFECTIVE DATE: January 1, 1996, unless a later date is cited at the end of a section.
[1/1/96; 20.11.62.5 NMAC – Rn, 20 NMAC 11.62.I.5 & A, 10/1/02]

20.11.62.6 OBJECTIVE: The objective of this Part is to establish permitting required by 40 CFR Part 72, and to fulfill state requirements that accommodate the implementation of the Federal Acid Rain Program, which is designed to control acid deposition at the national level.
[1/1/96; 20.11.62.6 NMAC – Rn, 20 NMAC 11.62.I.6, 10/1/02]

20.11.62.7 DEFINITIONS: The terms used in this Part shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C 7401, et seq. as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. 7651, et seq. (November 15 1990). In addition to the definitions in 20.11.62.7 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. “Acid Rain Compliance Option” means one of the methods of compliance used by an affected unit under the Acid Rain Program as described in a compliance plan submitted and approved in accordance 20.11.62.15 NMAC or regulations implementing 40 CFR Part 76.

B. “Acid Rain Emissions Limitation” means:

- (1) For the purposes of sulfur dioxide emissions:
 - (a) the tonnage equivalent of the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year,
 - (b) as adjusted:
 - (i) by allowances allocated by the EPA pursuant to Section 403, Section 405 (a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and Section 406 of the Act,
 - (ii) by allowances allocated by the EPA pursuant to 40 CFR Part 72 Subpart D, and thereafter
 - (iii) by allowance transfers to or from the compliance sub-account for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34(c).

(2) For purposes of nitrogen oxides emissions, the applicable limitation established by regulations promulgated by the EPA pursuant to 40 CFR Part 76, as modified by an Acid Rain permit application submitted to the Department, and an Acid Rain permit issued by the Department, in accordance with regulations implementing 40 CFR Part 76.

C. “Acid Rain Emissions Reduction Requirement” means a requirement under the Acid Rain Program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

D. “Acid Rain Permit or Permit” means the legally binding written document, or portion of such document, issued by the Department (following an opportunity for appeal pursuant to 40 CFR Part 78 or local ordinance ROA 1994 Section 9-5-1-7), including any permit revisions, specifying the Acid Rain Program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

E. “Acid Rain Program” means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the Act, this Part, 40 CFR Parts 72, 73, 74, 75, 76, 77, and 78.

F. “Act” means the Clean Air Act, 42 U.S.C. 7401, et seq. as amended by Public Law No. 101-549 (November 15, 1990).

G. “Actual SO₂ Emissions rate” means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the NADB, the "1985 actual SO₂ emissions rate " for the unit shall be the rate specified by the Administrator in the NADB under the data field "SO₂ RTE."

H. “Affected Source” means a source that includes one or more affected units.

I. “Affected Unit” means a unit that is subject to any Acid Rain emissions reduction requirement or Acid Rain emissions limitation.

J. “Affiliate” shall have the meaning set forth in Section 2(a)(11) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(11), as of November 15, 1990.

K. “Allocate or Allocation” means the initial crediting of an allowance by the EPA to an ATS unit account or general account.

L. “Allowance” means an authorization by the EPA under the Acid Rain Program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

M. “Allowance Deduction or Deduct When Referring to Allowances” means the permanent withdrawal of allowances by the EPA from an ATS compliance sub-account to account for the number of the tons of SO₂ emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR Part 75, or for any other allowance surrender obligations of the Acid Rain Program.

N. “Allowances Held or Hold Allowances” means the allowances recorded by the EPA, or submitted to the EPA for recordation in accordance with 40 CFR 73.50, in an ATS account.

O. “Allowances Tracking System or ATS” means the Acid Rain Program system by which the EPA allocates, records, deducts, and tracks allowances.

P. “Allowance Tracking System Account” means an account in the ATS established by the EPA for purposes of allocating, holding, transferring, and using allowances.

Q. “Allowance Transfer Deadline” means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance sub-account for the purposes of meeting the unit's Acid Rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

R. “Authorized Account Representative” means a responsible natural person who is authorized, in accordance with 40 CFR Part 73, to transfer and otherwise dispose of allowances held in an ATS general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

S. “Basic Phase II Allowance Allocations” means:

(1) for calendar years 2000 through 2009 inclusive, allocations of allowances made by the EPA pursuant to Section 403 and Section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) of the Act,

(2) For each calendar year beginning in 2010, allocations of allowances made by the EPA pursuant to Section 403 and Section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) of the Act.

T. “Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

U. “Certificate of Representation” means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of

identified affected sources authorized to represent the owners and operators of such source(s) and of the affected units at such source(s) with regard to matters under the Acid Rain Program.

V. "Certifying Official" means:

(1) for a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation,

(2) for partnership or sole proprietorship, a general partner or the proprietor, respectively, and

(3) for a local government entity or State, federal, or other public agency, either a principal executive officer or ranking elected official.

W. "Coal" means all solid fuels classified as anthracite, bituminous, sub-bituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 "Standard Classification of Coals by Rank."

X. "Coal Derived Fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquefied or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

Y. "Coal-Fired" means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmbtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMEFUEL".

Z. "Cogeneration Unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

AA. "Commence Commercial Operation" means to have begun to generate electricity for sale, including the sale of test generation.

BB. "Commence Construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

CC. "Commence Operation" means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

DD. "Common Stack" means the exhaust of emissions from two or more units through a single flue.

EE. "Compliance Certification" means a submission to the EPA or the Department that is required by this Part, by 40 CFR Part 72, 73, 74, 75, 76, 77, or 78 to report an affected source or an affected unit's compliance or non-compliance with a provision of the Acid Rain Program and that is signed and verified by the designated representative in accordance with 20.11.62.19 NMAC, 40 CFR Part 72 Subpart B, and the Acid Rain Program regulations generally.

FF. "Compliance Plan, For Purposes of the Acid Rain Program" means the document submitted for an affected source in accordance with Subsections A and B of 20.11.62.14NMAC specifying the method(s) (including one or more Acid Rain compliance options under R-402 or 40 CFR Part 76) by which each affected unit at the source will meet the applicable Acid Rain emissions limitation and Acid Rain emissions reduction requirements.

GG. "Compliance Sub-account" means the sub-account in an affected unit's Allowance Tracking System account, established pursuant to 40 CFR 73.31 (a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's Acid Rain emissions limitation for sulfur dioxide.

HH. "Compliance Use Date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's Acid Rain emissions limitation for sulfur dioxide.

II. "Construction" means fabrication, erection, or installation of a unit or any portion of a unit.

JJ. "Designated Representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Whenever the term "responsible official" is used in 40 CFR Part 70 or in any other regulations implementing Title V of the Act, it shall be deemed to refer to the "designated representative" with regard to all matters under the Acid Rain Program.

KK. “Diesel Fuel” means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American Society for Testing and Materials ASTM D975-91, "Standard Specification for Diesel Fuel Oils."

LL. “Direct Public Utility Ownership” means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

MM. “Draft Acid Rain Permit or Draft Permit” means the version of the Acid Rain permit, or the Acid Rain portion of an operating permit, that the Department offers for public comment.

NN. “Emissions” means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the EPA by the designated representative and as determined by the EPA, in accordance with the emissions monitoring requirements of 40 CFR Part 75.

OO. “Excess Emissions” means:

(1) any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the Acid Rain emissions limitation for sulfur dioxide for the unit, and

(2) any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the Acid Rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

PP. “Existing Unit” means a unit (including a unit subject to Section 111 of the Act) that commenced commercial operation before November 15, 1990 and that on or after November 15, 1990 served a generator with a nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990 served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an "existing unit".

QQ. “Facility” means any institutional, commercial, or industrial structure, installation, plant, source, or building.

RR. “Fossil Fuel” means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

SS. “Fossil Fuel-Fired” means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year.

TT. “Fuel Oil” means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined by the American Society for Testing and Materials in ASTM D396-90a, "Standard Specification for Fuel Oils," and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state.

UU. “Gas-Fired” means the combustion of natural gas, or a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for at least 90 percent of the average annual heat input during the previous three calendar years and for at least 85 percent of the annual heat input in each of those calendar years; and any fuel other than coal or any other coal-derived fuel for the remaining heat input, if any.

VV. “General Account” means an ATS account that is not a unit account.

WW. “Generator” means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

XX. “Generator Output Capacity” means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

YY. “Heat Input” means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

ZZ. “Independent Power Production Facility (IPP)” means a source that:

- (1) is non-recourse project financed, as defined by the Secretary of Energy at 10 CFR Part 715,
- (2) is used for the generation of electricity, eighty percent or more of which is sold at wholesale, and
- (3) is a new unit required to hold allowances under Title IV of the Act,
- (4) provided that direct public utility ownership of the equipment comprising the facility does not exceed 50 percent.

AAA. “Life-of-the-Unit, Firm Power Contractual Arrangement” means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) for the life of the unit,

(2) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination, or

(3) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

BBB. “Nameplate Capacity” means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

CCC. “National Allowance Data Base or NADB” means the database established by the Administrator under Section 402(4)(C) of the Act.

DDD. “Natural Gas” means a naturally occurring fluid mixture of hydrocarbons containing little or no sulfur (e.g., methane, ethane, or propane), produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure conditions under ordinary conditions.

EEE. “New Unit” means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

FFF. “Offset Plan” means a plan pursuant to 40 CFR Part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

GGG. “Oil-Fired” means the combustion of: fuel oil for more than 10 percent of the average annual heat input during the previous three calendar years or for more than 15 percent of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel, other than coal or any other coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), for the remaining heat input, if any.

HHH. “Operating Permit” means a permit issued under 40 CFR Part 70 and any other regulations implementing Title V of the Act.

III. “Owner” means any of the following persons:

(1) any holder of any portion of the legal or equitable title in an affected unit, or

(2) any holder of a leasehold interest in an affected unit, or

(3) any purchaser of power from an affected unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit, or

(4) with respect to any ATS general account, any person identified in the submission required by 40 CFR 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

JJJ. “Owner or Operator” means any person who is an owner or who operates, controls, or supervises an affected unit or affected source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected source.

KKK. “Permit Revision” means a permit modification, fast track modification, administrative permit amendment, or automatic permit amendment, as provided in 20.11.62.18 NMAC.

LLL. “Phase II” means the Acid Rain Program period beginning January 1, 2000, and continuing into the future thereafter.

MMM. “Potential Electrical Output Capacity” means the MWe capacity rating for the units which shall be equal to 33 percent of the maximum design heat input capacity of the steam generating unit, as calculated according to 40 CFR Part 72 appendix D.

NNN. “Power Distribution System” means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

OOO. “Power Purchase Commitment” means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

(1) a power sales agreement,

(2) a State regulatory authority order requiring a utility to:

(a) enter into a power sales agreement with the facility,

(b) purchase from the facility, or

(c) enter into arbitration concerning the facility for the purpose of establishing terms and

conditions of the utility's purchase of power.

(3) a letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the time frame established by the terms of the letter of intent but no later than November 15, 1992 or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source is executed on or before November 15, 1992, or

(4) a utility competitive bid solicitation that has resulted in the selection of the qualifying facility of independent power production facility as the winning bidder.

PPP. "Power Sales Agreement" is a legally binding agreement between a QF, IPP, or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

QQQ. "Primary Fuel or Primary Fuel Supply" means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

RRR. "Proposed Acid Rain Permit or Proposed Permit" means the version of an Acid Rain permit that the Department submits to the EPA after the public comment period, but prior to completion of the EPA permit review period under 40 CFR 70.8(c).

SSS. "Qualifying Facility (QF)" means a "qualifying small power production facility" within the meaning of Section 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of Section 3(18)(B) of the Federal Power Act.

TTT. "Qualifying Power Purchase Commitment" means a power purchase commitment in effect as of November 15, 1990 without regard to changes to that commitment so long as:

(1) the identity of the electric output purchaser, the identity of the steam purchaser and the location of the facility, remain unchanged as of the date the facility commences commercial operation, and

(2) the terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the Acid Rain Program to be shifted to the purchaser.

UUU. "Qualifying Repowering Technology" means:

(1) replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto-hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the EPA, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990, or

(2) any oil or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

VVV. "Receive or Receipt Of" means the date the EPA or the Department comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the EPA or the Department in the regular course of business.

WWW. "Recordation, Record, or Recorded" means, with regard to allowances, the transfer of allowances by the EPA from one ATS account or sub-account to another.

XXX. "Schedule of Compliance" means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct non-compliance, with an applicable requirement of the Acid Rain Program, including any applicable Acid Rain permit requirement.

YYY. "Secretary of Energy" means the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.

ZZZ. "Simple Combustion Turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

AAAA. "Solid Waste Incinerator" means a source as defined in Section 129(g)(1) of the Act.

BBBB. "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Act. For purposes of Section 502(c) of the Act, a "source", including a "source" with multiple units, shall be considered a single "facility."

CCCC. "Stack" means a structure that includes one or more flues and the housing for the flues.

DDDD. “State” means New Mexico and includes any non-federal authorities, including local agencies, interstate associations, and State-wide agencies with approved State operating permit programs. The term "State" shall have its conventional meaning where such meaning is clear from the context.

EEEE. “State Operating Permit Program” means an operating permit program that the EPA has approved as meeting the requirements of Titles IV and V of the Act and 40 CFR Parts 70 and 72.

FFFF. “Submit or Serve” means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) in person,
- (2) by United States Postal Service certified mail with the official postmark or, if service is by the EPA or the Department, by any other mail service by the United States Postal Service, or
- (3) by other means with an equivalent time and date mark used in the regular course of business to indicate the date of dispatch or transmission and a record of prompt delivery. Compliance with any "submission", "service", or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

GGGG. “Ton or Tonnage” means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the Acid Rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR Part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

HHHH. “Total Planned Net Output Capacity” means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990. "Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

IIII. “Unit” means a fossil fuel-fired combustion device.

JJJJ. “Unit Account” means an ATS account, established by the EPA for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

KKKK. “Utility” means any person that sells electricity.

LLLL. “Utility Competitive Bid Solicitation” is a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

MMMM. “Utility Regulatory Authority” means an authority, board, commission, or other entity (limited to the local-, State-, or federal-level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

NNNN. “Utility Unit” means a unit owned or operated by a utility:

- (1) that serves a generator that produces electricity for sale, or
- (2) that during 1985, served a generator that produced electricity for sale,
- (3) notwithstanding paragraphs (1) and (2) of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990 is not a utility unit for purposes of the Acid Rain Program.
- (4) notwithstanding paragraphs (1) and (2) of this definition, a unit that co-generates steam and electricity is not a utility unit for purposes of the Acid Rain Program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

OOOO. “Measurements, Abbreviations, and Acronyms”

- (1) **ASTM** - American Society for Testing and Materials
- (2) **Btu** - British thermal unit.
- (3) **CFR** - Code of Federal Regulations
- (4) **DOE** - Department of Energy.
- (5) **mmBtu** - million Btu.
- (6) **Mwe** - megawatt electrical.
- (7) **SO₂** - sulfur dioxide.

[1/1/96; 20.11.62.7 NMAC – Rn, 20 NMAC 11.62.I.7, 10/1/02]

20.11.62.8 VARIANCES: [Reserved]
[20.11.62.8 NMAC - N, 10/1/02]

20.11.62.9 SAVINGS CLAUSE: Any amendment to 20.11.62 NMAC which is filed with the State Records Center shall not affect actions pending for violation of a City or County ordinance, or 20.11.62. 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.
[1/1/96; 20.11.62.9 NMAC – Rn, 20 NMAC 11.62.I.9, 10/1/02]

20.11.62.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of this Part or the 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.
[1/1/96; 20.11.62.10 NMAC – Rn, 20 NMAC 11.62.I.10, 10/1/02]

20.11.62.11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.
[1/1/96; 20.11.62.11 NMAC – Rn, 20 NMAC 11.62.I.11 & A, 10/1/02]

20.11.62.12 ACID RAIN PROGRAM GENERAL PROVISIONS:

A. Applicability:

(1) Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the Acid Rain Program.

- (a) A unit listed in Table 1 of 40 CFR 73.10(a).
- (b) An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10 and any other existing utility unit, except a unit under Paragraph (2), of Subsection A of 20.11.62.12 NMAC.
- (c) A utility unit, except a unit under Paragraph (2), of Subsection A of 20.11.62.12 NMAC, that:
 - (i) is a new unit,
 - (ii) did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990 but serves such a generator after November 15, 1990,
 - (iii) was a simple combustion turbine on November 15, 1990 but adds or uses auxiliary firing after November 15, 1990,
 - (iv) was an exempt cogeneration facility under Subparagraph (d), of Paragraph (2), of Subsection A of 20.11.62.12 NMAC but during any three calendar year period after November 15, 1990 sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical out-put capacity and more than 219,000 MWe-hrs electric output, on a gross basis;
 - (v) was an exempt qualifying facility under Subparagraph (e), of Paragraph (2), of Subsection A of 20.11.62.12 NMAC but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of qualifying facility,
 - (vi) was an exempt independent power production facility under Subparagraph (f), of Paragraph (2), of Subsection A of 20.11.62.12 NMAC but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of independent power production facility, or
 - (vii) was an exempt solid waste incinerator under Subparagraph (g), of Paragraph (2), of Subsection A of 20.11.62.12 NMAC but during any three calendar year period after November 15, 1990 consumes 20 percent or more (on a Btu basis) fossil fuel.

(2) The following types of units are not affected units subject to the requirements of the Acid Rain Program:

- (a) A simple combustion turbine that commenced operation before November 15, 1990.
- (b) Any unit that commenced commercial operation before November 15, 1990 and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.
- (c) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.
- (d) A cogeneration facility which:

(i) for a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program, or

(ii) for units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program.

(e) A qualifying facility that:

(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(ii) consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the EPA may exercise discretion to designate which units are exempt.

(f) An independent power production facility that:

(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity, and

(ii) consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the EPA may exercise discretion to designate which units are exempt.

(g) A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator, which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the Acid Rain Program.

(h) A non-utility unit.

(3) A certifying official of any unit may petition the EPA for a determination of applicability under 40 CFR 72.6(c). The EPA's determination of applicability shall be binding upon the Department, unless the petition is found to have contained significant errors or omissions.

B. New Units Exemption:

(1) **Applicability:** This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05 percent or less by weight, as determined in accordance with Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.12 NMAC.

(2) **Petition for Written Exemption:** The designated representative, authorized in accordance with 40 CFR Part 72 Subpart B, of a source that includes a unit under Paragraph (1), of Subsection B of 20.11.62.12 NMAC may petition the Department for a written exemption, or to renew a written exemption, for the unit from certain requirements of the Acid Rain Program. The petition shall be submitted on a form approved by the Department, which includes the following elements:

(a) identification of the unit,

(b) the nameplate capacity of each generator served by the unit,

(c) a list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with Paragraph (1), of Subsection B of 20.11.62.12 NMAC.

(d) A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.

(e) The special provisions in Paragraph (4), of Subsection B of 20.11.62.12 NMAC.

(3) Department's Action:

(a) The Department will issue, for any unit meeting the requirements Paragraphs (1) and (2), of Subsection B of 20.11.62.12 NMAC, a written exemption from the requirements of the Acid Rain Program except for the requirements specified in this Section, 40 CFR 72.2 through 72.7, and 40 CFR 72.10 through 72.13; provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the EPA deducts from the unit's ATS account, allowances pursuant to 40 CFR 72.7(c)(1)(i) and (d)(1).

(b) The exemption shall take effect on January 1 of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with Subparagraph (c), of Paragraph (3), of Subsection B of 20.11.62.12 NMAC; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the Acid Rain Program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the exemption takes effect.

(c) In considering and issuing or denying a written exemption under Subparagraph (a), of Paragraph (3), of Subsection B of 20.11.62.12 NMAC, the Department will apply the permitting procedures in 20.11.62.17 NMAC by:

(i) treating the petition as an Acid Rain permit application under such provisions,
(ii) issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions, and
(iii) issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under such provisions; provided that no provision under 20.11.62.17 NMAC concerning the content, effective date, or term of an Acid Rain permit shall apply to the written exemption or proposed written exemption under this Section.

(d) A written exemption issued under this section shall have a term of 5 years from its effective date, except as provided in Subparagraph (c), of Paragraph (4), Subsection B of 20.11.62.12 NMAC.

(4) Special Provisions:

(a) The owners and operators of each unit exempted under this Section shall determine the sulfur content by weight of its fuel as follows:

(i) for petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D4057-88 and ASTM D129-91, ASTM D2622-92, or ASTM D4294-90.

(ii) for natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05 per cent or less by weight.

(iii) for gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D1072-90 and ASTM D1265-92; provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using ASTM method ASTM D1072-90.

(b) The owners and operators of each unit exempted under this Section shall retain at the source that includes the unit, the records of the results of the tests performed under Items (i), and (iii), of Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.12 NMAC, and a copy of the purchase agreements for the fuel under Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.12 NMAC, stating the sulfur content of such fuel. Such records and documents shall be retained for 5 years from the date they are created.

(c) On the earlier of the date the written exemption expires, the date a unit exempted under this Section burns any fuel with a sulfur content in excess of 0.05 percent by weight (as determined in accordance with Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.12 NMAC), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under this Section and shall be subject to all requirements of the Acid Rain Program, except that:

(i) notwithstanding Paragraphs (2) and (3), of Subsection A of 20.11.62.14 NMAC, the designated representative of the source that includes the unit shall submit a complete Acid Rain permit application on the later of January 1, 1998 or the date the unit is no longer exempted under this Section,

(ii) for purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements Paragraph (1), of Subsection B of 20.11.62.12 NMAC.

C. Retired Units Exemption:

(1) **Applicability:** This Subsection applies to any affected unit that is retired prior to the issuance (including renewal) of an Acid Rain permit for the unit as a final agency action.

(2) **Petition For Written Exemption:**

(a) The designated representative, authorized in accordance with 40 CFR Part 72 Subpart B, of a source that includes a unit under Paragraph (1), of Subsection C of 20.11.62.12 NMAC may petition the Department for a written exemption, or to renew a written exemption, for the unit from certain requirements of the Acid Rain Program.

(b) A petition under this section shall be submitted on or before:

- (i) the deadline for submitting an Acid Rain permit application for Phase II, or
- (ii) if the unit has a Phase II Acid Rain permit, the deadline for reapplying for such

permit.

(c) The petition under this Section shall be submitted on a form approved by the Department which includes the following elements:

- (i) identification of the unit,
- (ii) the applicable deadline under Subparagraph (b), of Paragraph (2), Subsection C of

20.11.62.12 NMAC,

(iii) the actual or expected date of retirement of the unit,

(iv) the following statement: "I certify that this unit ['is' or 'will be', as applicable] permanently retired on the date specified in this petition and will not emit any sulfur dioxide or nitrogen oxides after such date;"

(v) A description of any actions that have been or will be taken and provide the basis for the certification in Item (iv), of Subparagraph (c), of Paragraph (2), Subsection C of 20.11.62.12 NMAC, and

(vi) the special provisions in Paragraph (4), of Subsection C of 20.11.62.12 NMAC.

(3) **Department's Action:**

(a) The Department will issue, for any unit meeting the requirements of (1) and (2), of Subsection C of 20.11.62.12 NMAC, a written exemption from the requirements of this Part and 40 CFR Part 72 except for the requirements specified in this Section and 40 CFR 72.1 through 72.6, 40 CFR 72.8, and 40 CFR 72.10 through 72.13.

(b) The exemption shall take effect on January 1 of the year following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with Subparagraph (c), of Paragraph (3), Subsection C of 20.11.62.12 NMAC; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of this Part and 40 CFR Part 72 concerning all years for which the unit was not exempted, even if such requirements arise or must be complied with after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the exemption takes effect.

(c) In considering and issuing or denying a written exemption under Subparagraph (c), of Paragraph (3), of Subsection C of 20.11.62.12 NMAC, the Department will apply the procedures in 20.11.62.17 by:

- (i) treating the petition as an Acid Rain permit application under such provisions,
- (ii) issuing or denying a draft written exemption that is treated as the issuance or denial

of a draft permit under such provisions, and

(iii) issuing or denying a proposed written exemption that is treated as a proposed permit under such provisions, provided that no provision under 20.11.62.17 NMAC concerning, the content, effective date, or term of an Acid Rain permit shall apply to the written exemption or proposed written exemption under this Section.

(d) A written exemption issued under this Subsection shall have a term of 5 years, except as provided in Subparagraph (c), of Paragraph (4), of Subsection C of 20.11.62.12 NMAC.

(4) **Special Provisions:**

(a) A unit exempted under this section shall not emit any sulfur dioxide and nitrogen dioxide starting on the date it is exempted.

(b) The owners and operators of a unit exempted under this section shall comply with monitoring requirements in accordance with 40 CFR Part 75 and will be allocated allowances in accordance with 40 CFR Part 73.

(c) A unit exempted under this Section shall not resume operation unless the designated representative of the source that includes the unit submits an Acid Rain permit application for the unit not less than 24 months prior to the later of January 1, 2000 or the date the unit is to resume operation. On the earlier of the date the written exemption expires or the date an Acid Rain permit application is submitted or is required to be submitted

under this paragraph, the unit shall no longer be exempted under this Section and shall be subject to all requirements of this Part and 40 CFR Part 72.

D. Standard Requirements:

(1) Permit Requirements:

- (a) The designated representative of each affected source and each affected unit at the source shall:
- (i) submit a complete Acid Rain permit application under this part in accordance with the deadlines specified in Subsection A of 20.11.62.13 NMAC,
 - (ii) submit in a timely manner any supplemental information that the Department determines is necessary in order to review an Acid Rain permit application and issue or deny an Acid Rain permit.
- (b) The owners and operators of each affected source and each affected unit at the source shall:
- (i) operate the unit in compliance with a complete Acid Rain permit application or a superseding Acid Rain permit issued by the Department,
 - (ii) have an Acid Rain Permit.

(2) Monitoring Requirements:

- (a) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR Part 75 and 76.
- (b) The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and 76 shall be used to determine compliance by the unit with the Acid Rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the Acid Rain Program.
- (c) The requirements of 40 CFR Part 75 and 76 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

(3) Sulfur Dioxide Requirements :

- (a) The owners and operators of each source and each affected unit at the source shall:
- (i) hold allowances, as of the allowance transfer deadline, in the unit's compliance sub-account (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit, and
 - (ii) comply with the applicable Acid Rain emissions limitation for sulfur dioxide.
- (b) Each ton of sulfur dioxide emitted in excess of the Acid Rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.
- (c) An affected unit shall be subject to the requirements Subparagraph (a), of Paragraph (3), of Subsection D of 20.11.62.12 NMAC as follows:
- (i) starting January 1, 2000, an affected unit under Subparagraph (b), of Paragraph (1), Subsection A of 20.11.62.12 NMAC,
 - (ii) starting on the later of January 1, 2000 or the deadline for monitor certification under 40 CFR Part 75, an affected unit under Subparagraph (c), Paragraph (1), Subsection A of 20.11.62.12 NMAC.
- (d) Allowances shall be held in, deducted from, or transferred among ATS accounts in accordance with the Acid Rain Program.
- (e) An allowance shall not be deducted, in order to comply with the requirements under Item (i), of Subparagraph (a), of Paragraph (3), Subsection D of 20.11.62.12 NMAC prior to the calendar year for which the allowance was allocated.
- (f) An allowance allocated by the EPA under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the Acid Rain permit application, the Acid Rain permit, or the written exemption under Subsections A B of 20.11.62.12 NMAC and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.
- (g) An allowance allocated by the EPA under the Acid Rain Program does not constitute a property right.

(4) Nitrogen Oxides Requirements: The owners and operators of the source and each affected unit at the source shall comply with the applicable Acid Rain emissions limitation for nitrogen oxides.

(5) Excess Emissions Requirements:

- (a) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the EPA, as required under 40 CFR Part 77, and submit a copy to the Department.

(b) The owners and operators of an affected unit that has excess emissions in any calendar year shall:

- (i) pay to the EPA without demand the penalty required, and pay to the EPA upon demand the interest on that penalty, as required by 40 CFR Part 77, and
- (ii) comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

(6) Record keeping and Reporting Requirements:

(a) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the EPA or Department.

(i) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(ii) All emissions monitoring information, in accordance with 40 CFR Part 75.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Acid Rain Program.

(iv) Copies of all documents used to complete an Acid Rain permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

(b) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 20.11.62.19 NMAC and 40 CFR Part 75.

(7) Liability:

(a) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete Acid Rain permit application, an Acid Rain permit, or a written exemption under Subsections B or C, of 20.11.62.12 NMAC, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the EPA pursuant to Section 113(c) of the Act and by the Department pursuant to ROA 1994 9-5-1-99(B)(1).

(b) Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement by the EPA pursuant to Section 113(c) of the Act and 18 U.S.C. 1001 and by the Department pursuant to ROA 1994 9-5-1-99(B)(2).

(c) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.

(d) Each affected source and each affected unit shall meet the requirements of the Acid Rain Program.

(e) Any provision of the Acid Rain Program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

(f) Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under Subsection B of 20.11.62.15NMAC (Phase II Repowering Extension plans), 40 CFR Part 76, and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 (including 40 CFR 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(g) Each violation of a provision of this Part and 40 CFR parts 72, 73, 74, 75, 76, 77, and 78 by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

(8) Effect On Other Authorities: No provision of the Acid Rain Program, an Acid Rain permit application, an Acid Rain permit, or a written exemption under Subsections B or C, of 20.11.62.12 NMAC shall be construed as:

(a) except as expressly provided in Title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from

compliance with any other provision of the Act, including the provisions of Title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans,

(b) limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act,

(c) requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State regulation, including any prudence review requirements under such State law,

(d) modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act, or

(e) interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

[1/1/96; 20.11.62.12 NMAC – Rn, 20 NMAC 11.62.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.62.II.1, 10/1/02]

20.11.62.13 DESIGNATED REPRESENTATIVE:

A. Submissions:

(1) The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the EPA in accordance with 40 CFR Part 72 Subpart B and, concurrently, shall submit a copy to the Department. Whenever the term "designated representative" is used in this Part, the term shall be construed to include the alternate designated representative.

(2) Each submission under the Acid Rain Program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

(3) In each submission under the Acid Rain Program, the designated representative shall certify, by his or her signature the following statements, which shall be included verbatim in such submission:

(a) "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made",

(b) "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment".

(4) The Department will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with Paragraphs (2) and (3), of Subsection A of 20.11.62.13 NMAC.

(a) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

(i) by the date of submission, of any Acid Rain Program submissions by the designated representative,

(ii) within 10 business days of receipt of a determination, of any written determination by the EPA or the Department, and

(iii) provided that the submission or determination covers the source or the unit.

(b) The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under II.2.1.E.1 [Subparagraph (e), Paragraph (1), Subsection B of 20.11.62.12 NMAC], unless the owner or operator expressly waives the right to receive such a copy.

B. Objections:

(1) Except as provided in 40 CFR 72.23, no objection or other communication submitted to the EPA or the Department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the Department, under the Acid Rain Program. In the event of such communication, the Department is not required to stay any submission or the effect of any action or inaction under the Acid Rain Program.

(2) The Department will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

[1/1/96; 20.11.62.13 NMAC – Rn, 20 NMAC 11.62.II.2, 10/1/02]

20.11.62.14 ACID RAIN PERMIT APPLICATIONS:

A. Requirement to Apply:

(1) **Duty to Apply:** The designated representative of any source with an affected unit shall submit a complete Acid Rain permit application by the applicable deadline in Paragraphs (2) and (3), of Subsection A of 20.11.62.14 NMAC, and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its Acid Rain Program requirements.

(2) **Deadlines:**

(a) For any source with an existing unit described under Subparagraph (b), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department on or before January 1, 1996.

(b) For any source with a new unit described under Item (i), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department at least 24 months before the later of January 1, 2000 or the date on which the unit commences operation.

(c) For any source with a unit described under Item (ii), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department at least 24 months before the later of January 1, 2000 or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

(d) For any source with a unit described under Item (iii), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department at least 24 months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.

(e) For any source with a unit described under Item (iv), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

(f) For any source with a unit described under Item (iii), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

(g) For any source with a unit described under Item (vi), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

(h) For any source with a unit described under Item (vii), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.200 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

(3) **Duty to Reapply:** The designated representative shall submit a complete Acid Rain permit application for each source with an affected unit at least 6 months or such longer time as may be approved under 40 CFR part 70 prior to the expiration of an existing Acid Rain permit governing the unit.

(4) The original and three copies of all permit applications shall be submitted to the Department.

B. Information Requirements For Acid Rain Permit Applications: A complete Acid Rain permit application shall be submitted on a form approved by the Department, which includes the following elements:

- (1) identification of the affected source for which the permit application is submitted,
- (2) identification of each affected unit at the source for which the permit application is submitted,
- (3) a complete compliance plan for each unit, in accordance with 20.11.62.15 NMAC,
- (4) the standard requirements under Subsection D of 20.11.62.12 NMAC, and
- (5) if the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

C. Permit Application Shield and Binding Effect of permit Application:

(1) Once a designated representative submits a timely and complete Acid Rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an Acid Rain permit under Subparagraph (b), of Paragraph (1), of Subsection D of 20.11.62.12 NMAC and Paragraph (1), of Subsection A of 20.11.62.14 NMAC; provided that any delay in issuing an Acid Rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the Department, necessary to issue a permit.

(2) Prior to the earlier of the date on which an Acid Rain permit is issued as a final agency action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete Acid Rain permit application shall be deemed to be operating in compliance with the Acid Rain Program.

(3) A complete Acid Rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an Acid Rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

[1/1/96; 20.11.62.14 NMAC – Rn, 20 NMAC 11.62.II.3, 10/1/02]

20.11.62.15 ACID RAIN COMPLIANCE PLAN AND COMPLIANCE OPTIONS:

A. General:

(1) For each affected unit included in an Acid Rain permit application, a complete compliance plan shall include:

(a) **for sulfur dioxide emissions**, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance sub-account (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with 20.11.62.15 NMAC, one or more of the Acid Rain compliance options,

(b) **for nitrogen oxides emissions**, a certification that the unit will comply with the applicable limitation established by 40 CFR Part 76 or shall specify one or more Acid Rain compliance options, in accordance with 40 CFR Part 76.

(2) The compliance plan may include a multi-unit compliance option under Subsection B of 20.11.62.15 NMAC or 40 CFR Part 76.

(a) A plan for a compliance option that includes units at more than one affected source shall be complete only if:

(i) such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan, and

(ii) a complete permit application is submitted covering each unit governed by such plan.

(b) Department's approval of a plan under Subparagraph (a), of Paragraph (2), of Subsection A of 20.11.62.15 NMAC that includes units in more than one State shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

(3) **Conditional Approval:** In the compliance plan, the designated representative of an affected unit may propose, in accordance with 20.11.62.15 NMAC, any Acid Rain compliance option for conditional approval; provided that an Acid Rain compliance option under 40 CFR Part 76 may be conditionally proposed only to the extent provided in regulations implementing 40 CFR Part 76.

(a) To activate a conditionally-approved Acid Rain compliance option, the designated representative shall notify the Department in writing that the conditionally-approved compliance option will actually be pursued beginning January 1 of a specified year. Such notification shall be subject to the limitations on activation under Subsection B of 20.11.62.15 NMAC and regulations implementing 40 CFR Part 76. If the conditionally approved compliance option includes a plan described in Subparagraph (a), of Paragraph (2), of Subsection A of 20.11.62.15 NMAC the designated representative of each source governed by the plan shall sign and certify the notification.

(b) The notification under Subparagraph (a), of Paragraph (3), of Subsection A of 20.11.62.15 NMAC shall specify the first calendar year and the last calendar year for which the conditionally approved Acid Rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

(c) Upon submission of a notification meeting the requirements of Subparagraph (a) and (b), of Paragraph (3), of Subsection A of 20.11.62.15 NMAC, the conditionally-approved Acid Rain compliance option

becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally-approved compliance option.

(d) A notification meeting the requirements of Subparagraph (a) and (b), of Paragraph (3), of Subsection A of 20.11.62.15 NMAC will revise the unit's permit in accordance with Subsection D of 20.11.62.18 NMAC.

(4) Termination of Compliance Option:

(a) The designated representative for a unit may terminate an Acid Rain compliance option by notifying the Department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under Subsection B of 20.11.62.15 NMAC and regulations implementing 40 CFR Part 76. If the compliance option includes a plan described in Subparagraph (a), of Paragraph (2), of Subsection A of 20.11.62.15 NMAC the designated representative for each source governed by the plan shall sign and certify the notification.

(b) The notification under Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.15 NMAC shall specify the calendar year for which the termination will take effect.

(c) Upon submission of a notification meeting the requirements of Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.15 NMAC the termination becomes binding on the owners and operators and the designated representative of any unit governed by the Acid Rain compliance option to be terminated.

(d) A notification meeting the requirements of Subparagraphs (a) and (b), of Paragraph (4), of Subsection B of 20.11.62.15 NMAC will revise the unit's permit in accordance Subsection D of 20.11.62.18 NMAC.

B. Repowering Extensions:

(1) Applicability:

(a) This Section shall apply to the designated representative of:

(i) any existing affected unit that is a coal-fired unit and has a 1985 actual SO₂ emissions rate equal to or greater than 1.2 lbs/mmBtu, or

(ii) any new unit that will be a replacement unit, as provided in Subparagraph (b), of Paragraph (2), Subsection B of 20.11.62.15 NMAC, for a unit meeting the requirements of Item (i), of Subparagraph (a), Paragraph (1), of Subsection B of 20.11.62.15 NMAC, or

(iii) any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Secretary of Energy.

(b) A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's Acid Rain emissions limitations for sulfur dioxide.

(2) The designated representative of any unit meeting the requirements of Item (i), of Subparagraph (a), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC; or may include in the unit's Acid Rain permit application a repowering extension plan that includes a demonstration that:

(a) the unit will be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide, or

(b) the unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

(3) In order to apply for a repowering extension, the designated representative of a unit under Subparagraph (a), of Paragraph (1), of Subsection B of 20.11.62.15 NMAC:

(a) Submit to the Department, by January 1, 1996, a complete repowering extension plan;

(b) Submit to the EPA before June 1, 1997, a complete petition for approval of repowering technology in accordance with 40 CFR 72.44(d) and submit a copy to the Department; and

(c) If the repowering extension plan is submitted for conditional approval, submit to the Department by December 31, 1997, a notification to activate the plan in accordance with Paragraph (3), of Subsection A of 20.11.62.15 NMAC.

(4) Contents of Repowering Extension Plan. A complete repowering extension plan shall include the following elements:

(a) Identification of the existing unit governed by the plan.

(b) The unit's federally-approved State Implementation Plan sulfur dioxide emissions limitation.

(c) The unit's 1995 actual SO₂ emissions rate, or best estimate of the actual emissions rate; provided that the actual emissions rate is submitted to the Department by January 30, 1996.

(d) A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under 40 CFR 72.44(d) with dates for the following milestones:

- (i) completion of design engineering,
- (ii) for a plan under Subparagraph (a), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC, removal of the existing unit from operation to install the qualified repowering technology,
- (iii) commencement of construction,
- (iv) completion of construction,
- (v) start-up testing,
- (vi) for a plan under Subparagraph (a), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC, shutdown of the existing unit, and
- (vii) commencement of commercial operation of the repowering technology.

(e) For a plan under Subparagraph (a), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC:

- (i) identification of the new unit. A new unit shall not be included in more than one repowering extension plan,
- (ii) certification that the new unit will replace the existing unit,
- (iii) certification that the new unit has the same designated representative as the existing unit,
- (iv) certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.

(f) The special provisions of Paragraph (7), of Subsection B of 20.11.62.15 NMAC.

(5) Department's Action on Repowering Extension Plan.

(a) The Department will not approve a repowering extension plan until the EPA makes a conditional determination that the technology is a qualified repowering technology, unless the Department approves such plan subject to the conditional determination of the EPA.

(b) Permit Issuance:

(i) Upon a conditional determination by the EPA that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the Department that such plan meets the requirements of this Section, the Department will issue the Acid Rain portion of the operating permit including: 1) The approved repowering extension plan, and 2) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section will be met.

(ii) Except as otherwise provided in Paragraph (6), of Subsection B of 20.11.62.15 NMAC, the repowering extension shall be in effect starting January 1, 2000 and ending on the day before the date (specified in the Acid Rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology; provided that the repowering extension shall end no later than December 31, 2003

(iii) The portion of the operating permit specifying the repowering extension and other requirements under Item (i) of Subparagraph (e), of Paragraph (5), of Subsection B of 20.11.62.15 NMAC shall be subject to the EPA's final determination, under 40 CFR 72.44(d)(4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.

(c) **Allowance Allocation.** Allowances will be allocated in accordance with 40 CFR 72.44(f)(3) and (g).

(6) Failed Repowering Projects:

(a) If, at any time before the end of the repowering extension under Item (ii), of Subparagraph (e), of Paragraph (5), of Subsection B of 20.11.62.15 NMAC, the designated representative of a unit governed by an approved repowering extension plan submits the notification under Paragraph (4), Subsection B of 20.11.62.19 NMAC that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing, the designated representative may submit to the Department a proposed permit modification demonstrating that such efforts were in good faith. If such demonstration is to the satisfaction of the EPA, the unit shall not be deemed in violation of the Act because of such a termination and the Department will revise the operating permit in accordance with this subparagraph. Regardless of whether notification under this subparagraph is given, the repowering extension will end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under Paragraph (4), of Subsection B of 20.11.62.19 NMAC.

(b) The designated representative of a unit governed by an approved repowering extension plan may submit to the Department a proposed permit modification demonstrating that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. If such demonstration is to the satisfaction, of the EPA

(i) The unit shall not be deemed in violation of the Act because of such failure to achieve the emissions reduction limitations;

(ii) The Department will revise the Acid Rain portion of the operating permit in accordance with Items (iii) and (iv), of Subparagraph (b), of Paragraph (6), of Subsection B of 20.11.62.15 NMAC;

(iii) The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and

(iv) The repowering extension will continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 31, 2003.

(7) Special Provisions:

(a) Emissions Limitations.

(i) **Sulfur Dioxide.** Allowances allocated during the repowering extension under Subparagraph (c), of Paragraph (5), of Subsection B of 20.11.62.15 NMAC, and Paragraph (6), of Subsection B of 20.11.62.15 NMAC to a unit governed by an approved repowering extension plan shall not be transferred to any ATS account other than the unit accounts of other units at the same source as that unit.

(ii) **Nitrogen Oxides.** Any existing unit governed by an approved repowering extension plan shall be subject to the Acid Rain emissions limitations for nitrogen oxides in accordance with 40 CFR Part 76 and regulations implementing 40 CFR Part 76 beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

(iii) No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under Section 111(j) of the Act.

(iv) No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under Section 111 of the Act.

(b) Reporting Requirements. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of Subsection B of 20.11.62.19 NMAC.

(c) Liability:

(i) The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan.

(ii) The units governed by the plan under Subparagraph (b), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC shall continue to have a common designated representative until the existing unit is permanently retired under the plan.

(d) Terminations: Except as provided in Paragraph (6), of Subsection B of 20.11.62.15 NMAC, a repowering extension plan shall not be terminated after December 31, 1999.

[1/1/96; 20.11.62.15 NMAC – Rn, 20 NMAC 11.62.II.4, 10/1/02]

20.11.62.16 ACID RAIN PERMIT:

A. Contents:

(1) Each Acid Rain permit (including any draft or proposed Acid Rain permit) will contain the following elements:

(a) all elements required for a complete Acid Rain permit application under Subsection B of 20.11.62.14 NMAC, as approved or adjusted by the Department,

(b) the applicable Acid Rain emissions limitation for sulfur dioxide, and

(c) the applicable Acid Rain emissions limitation for nitrogen oxides.

(2) Each Acid Rain permit is deemed to incorporate the definitions of terms under 20.11.62.7 NMAC.

B. Permit Shield: Each affected unit operated in accordance with the Acid Rain permit that governs the unit and that was issued in compliance with Title IV of the Act, as provided in this Part, 40 CFR Parts 72, 73, 75, 76, 77, and 78, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in Subparagraph (f), of Paragraph (7), of Subsection D of 20.11.62.12 NMAC.

[1/1/96; 20.11.62.16 NMAC – Rn, 20 NMAC 11.62.II.5, 10/1/02]

20.11.62.17 ACID RAIN PERMIT ISSUANCE PROCEDURES:

A. General: The Department will issue or deny all Acid Rain permits in accordance with 20.11.42 NMAC, including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by Sections 205 and 206 of 20.11.62 NMAC.

B. Completeness: The Department will submit a written notice of application completeness to the EPA within 10 working days following a determination by the Department that the Acid Rain permit application is complete.

C. Statement of Basis:

(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the Department relied in issuing or denying the draft permit.

(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

(3) The Department will submit to the EPA a copy of the draft Acid Rain permit and the statement of basis and all other relevant portions of the operating permit that may affect the draft Acid Rain permit.

D. Issuance of Acid Rain Permits:

(1) Proposed permit: After the close of the public comment period, the Department will incorporate all necessary changes and issue or deny a proposed Acid Rain permit.

(2) The Department will submit the proposed Acid Rain permit or denial of a proposed Acid Rain permit to the EPA in accordance with 20.11.42 NMAC, the provisions of which shall be treated as applying to the issuance or denial of a proposed Acid Rain permit.

(3) Following the EPA's review of the proposed Acid Rain permit or denial of a proposed Acid Rain permit, the Department or, under 20.11.42 NMAC (treated as applying to the issuance or denial of an Acid Rain permit), the EPA will incorporate any required changes and issue or deny the Acid Rain permit in accordance with 20.11.62.16 NMAC. No Acid Rain permit (including a draft or proposed permit) shall be issued unless the EPA has received a certificate of representation for the designated representative of the source in accordance with 40 CFR Part 72 Subpart B.

(4) Permit issuance deadline and effective date:

(a) On or before December 31, 1997, the Department will issue an Acid Rain permit to each affected source whose designated representative submitted a timely and complete Acid Rain permit application by January 1, 1996 in accordance with Subsection A of 20.11.62.13 NMAC and meets the requirements of 20.11.62.17 NMAC and 20.11.42 NMAC.

(b) Nitrogen Oxides: Not later than January 1, 1999, the Department will reopen the Acid Rain permit to add the Acid Rain Program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with Subsection A of 20.11.62.13 NMAC. Such reopening shall not affect the term of the Acid Rain portion of an operating permit.

(c) Each Acid Rain permit issued in accordance with Subparagraph (a), of Paragraph (4), Subsection D of 20.11.62.17 NMAC shall take effect by the later of January 1, 2000, or, where the permit governs a unit under Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the deadline for monitor certification under 40 CFR Part 75.

(d) Each Acid Rain permit shall have a term of 5 years commencing on its effective date.

(e) An Acid Rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

(5) Each Acid Rain permit shall contain all applicable Acid Rain requirements, shall be a portion of the operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available. Invalidation of the Acid Rain portion of an operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the Acid Rain portion of the permit.

E. Acid Rain Permit Appeal Procedures:

(1) Appeals of the Acid Rain portion of an operating permit issued by the Department that do not challenge or involve decisions or actions of the EPA under 40 CFR Part 72, 73, 74, 75, 76, 77 and 78 and regulations implementing 40 CFR Part 74 and 76 shall be conducted pursuant to ROA 1994 Section 9-5-1-7.

Appeals of the Acid Rain portion of such a permit that challenge or involve such decisions or actions of the EPA shall follow the procedures under 40 CFR Part 78 and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(2) No administrative appeal or judicial appeal of the Acid Rain portion of an operating permit shall be allowed more than 30 days following respectively issuance of the Acid Rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(3) The EPA may intervene as a matter of right in any State administrative appeal of an Acid Rain permit or denial of an Acid Rain permit.

(4) No administrative appeal concerning an Acid Rain requirement shall result in a stay of the following requirements:

(a) the allowance allocations for any year during which the appeal proceeding is pending or is being conducted,

(b) any standard requirement under Subsection D of 20.11.62.12 NMAC,

(c) the emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR Part 75,

(d) uncontested provisions of the decision on appeal, and

(e) the terms of a certificate of representation submitted by a designated representative under 40 CFR Part 72 Subpart B.

(5) The Department will serve written notice on the Administrator of any State administrative or judicial appeal concerning an Acid Rain provision of any operating permit or denial of an Acid Rain portion of any operating permit within 30 days of the filing of the appeal.

(6) The Department will serve written notice on the Administrator of any determination or order in a State administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an Acid Rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the Acid Rain permit or revoke the permit for cause in accordance with 20.11.42 NMAC.

[1/1/96; 20.11.62.17 NMAC – Rn, 20 NMAC 11.62.II.6, 10/1/02]

20.11.62.18 PERMIT REVISIONS:

A. General:

(1) This Section shall govern revisions to any Acid Rain permit issued by the Department.

(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the Acid Rain permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.

(3) The terms of the Acid Rain permit shall apply while the permit revision is pending.

(4) Any determination or interpretation by State (including the Department or a State court) modifying or voiding any Acid Rain permit provision shall be subject to review by the EPA in accordance with 20.11.42 NMAC as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with Subsection D of 20.11.62.206 NMAC.

(5) The standard requirements of Subsection D of 20.11.62.12 NMAC shall not be modified or voided by a permit revision.

(6) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under Subsection B of 20.11.62.15 NMAC and 40 CFR Part 76 and regulations implementing 40 CFR Part 76.

(7) For permit revisions not described in Subsections B and C of 20.11.62.18 NMAC, the Department may, in its discretion, determine which of these sections is applicable.

B. Permit Modifications:

(1) Permit modifications shall follow the permit issuance requirements of 20.11.62.17 NMAC and 20.11.42 NMAC. For purposes of applying Paragraph (1), Subsection B of 20.11.62.18 NMAC, a permit modification shall be treated as an Acid Rain permit application, to the extent consistent with 20.11.62.18 NMAC.

(2) The following permit revisions are permit modifications:

(a) relaxation of an excess emission offset requirement after approval of the offset plan by the EPA,

(b) incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period,

(c) determinations concerning failed repowering projects under Subparagraph (a), of Paragraph (6), of Subsection B of 20.11.62.15 NMAC and Subparagraph (c), of Paragraph (6), of Subsection B of 20.11.62.15 NMAC, and

(d) at the option of the designated representative submitting the permit revision, the permit revisions listed in Paragraph (2), of Subsection C of 20.11.62.18 NMAC.

C. Fast-Track Modifications:

(1) Fast-track modifications shall follow the following procedures:

(a) The designated representative shall serve a copy of the fast-track modification on the EPA, the Department, and any person entitled to a written notice under 20.11.42 NMAC. Within 5 business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice.

(b) The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the Department and to the designated representative.

(c) The designated representative shall submit the fast-track modification to the Department on or before commencement of the public comment period.

(d) Within 30 days of the close of the public comment period, the Department will consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be effective immediately upon issuance, in accordance with 20.11.42 NMAC as applied to significant modifications.

(2) The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this section or permit modifications under Subsection B of 20.11.62.18 NMAC:

(a) incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process,

(b) addition of a nitrogen oxides averaging plan to a permit, and

(c) changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

D. Administrative Permit Amendment:

(1) Administrative amendments shall follow the procedures set forth in 20.11.42 NMAC. The Department will submit the revised portion of the permit to the EPA within 10 working days after the date of final action on the request for an administrative amendment.

(2) The following permit revisions are administrative amendments:

(a) activation of a compliance option conditionally approved by the Department; provided that all requirements for activation under Paragraph (3), of Subsection A of 20.11.62.15 NMAC and Subsection B of 20.11.62.15 NMAC are met,

(b) changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the EPA in accordance with 40 CFR Part 72 Subpart B,

(c) correction of typographical errors,

(d) changes in names, addresses, or telephone or facsimile numbers,

(e) changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the EPA in accordance with 40 CFR Part 72 Subpart B,

(f) Termination of a compliance option in the permit; provided that all requirements for termination under Paragraph (4), of Subsection A of 20.11.62.15 NMAC shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999,

(g) changes in the date, specified in a new unit's Acid Rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with Subsection D of 20.11.62.12 NMAC,

(h) the addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of regulations implementing 40 CFR Part 76 are met, and

(i) incorporation of changes that the EPA has determined to be similar to those in Subparagraphs (a) through (h), of Paragraph (2), of Subsection D of 20.11.62.18 NMAC.

E. Automatic Permit Amendment: The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's Acid Rain permit by operation of law without any further review:

- (1) upon recordation by the EPA under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit's ATS account, and
- (2) incorporation of an offset plan that has been approved by the EPA under 40 CFR Part 77.

F. Permit Reopenings:

- (1) As provided in 20.11.42 NMAC, the Department will reopen an Acid Rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.
- (2) In reopening an Acid Rain permit for cause, the Department will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of Sections 204 and 205 of 20.11.62 NMAC.
- (3) Any reopening of an Acid Rain permit shall not affect the term of the permit.

[1/1/96; 20.11.62.18 NMAC – Rn, 20 NMAC 11.62.II.7, 10/1/02]

20.11.62.19 COMPLIANCE CERTIFICATION:

A. Annual Compliance Certification Report:

- (1) **Applicability and Deadline:** For each calendar year in which a unit is subject to the Acid Rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the EPA and to the Department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.
- (2) The submission of complete compliance certifications in accordance with Paragraph (1), of Subsection A of 20.11.62.19 NMAC and 40 CFR Part 75 shall be deemed to satisfy the requirement to submit compliance certifications under 20.11.42 NMAC with regard to the Acid Rain portion of the source's operating permit.

B. Units With Repowering Extension Plans:

(1) **Design and Engineering and Contract Requirements:** No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the EPA and the Department:

- (a) Satisfactory documentation of a preliminary design and engineering effort.
- (b) A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the Administrator under 40 CFR 72.44(d)(3).

(c) The letter agreement under Subparagraph (b), of Paragraph (1), of Subsection B of 20.11.62.19 NMAC shall be signed and dated by each party and specify

- (i) the parties to the contract,
- (ii) the date each party executed the contract,
- (iii) the unit to which the contract applies,
- (iv) a brief list identifying each provision of the contract,
- (v) any dates to which the parties agree, including construction completion date,
- (vi) the total dollar amount of the contract, and
- (vii) a statement that a copy of the contract is on site at the source and will be submitted upon written request of the EPA or the Department.

(2) **Removal From Operation To Repower:** The designated representative of a unit governed by an approved repowering plan shall notify the EPA and the Department in writing at least 60 days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

(3) **Commencement of Operation:** Not later than 60 days after the units repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the EPA and the Department comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR Part 75.

(4) **Decision to Terminate:** If at any time before the end of the repowering extension and before completion of construction and start-up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the EPA and the Department by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.

[1/1/96; 20.11.62.19 NMAC – Rn, 20 NMAC 11.62.II.8, 10/1/02]

HISTORY OF 20.11.62 NMAC:

Pre-NMAC History: none.

History of Repealed Material: [Reserved]

Other History: 20 NMAC 11.62, Acid Rain, filed 11/28/95 was **renumbered, reformatted, amended and replaced** by 20.11.62 NMAC, Acid Rain, effective 10/1/02.