

ORIGINAL

**ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

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AQCB Petition No. 2009- 1

PETITION TO ADOPT NEW REGULATIONS)
AND TO AMEND VARIOUS SECTIONS OF)
TITLE 20, CHAPTER 11, PARTS 1, 8, 41, AND)
42 OF THE NEW MEXICO ADMINISTRATIVE)
CODE FOR THE PURPOSE OF ADOPTING THE)
STATEWIDE CAP ON GREENHOUSE GAS)
EMISSIONS AND PROMULGATING OTHER)
REQUIREMENTS RELATED THERETO)
and)
REQUEST FOR PUBLIC HEARING)

Pursuant to 20.11.82.18 NMAC, New Energy Economy, Inc. (“Petitioner”) petitions the Albuquerque/Bernalillo Air Quality Control Board (the “Board”) to adopt new regulations and to amend existing regulations, as set out in detail below, for the purpose of promulgating a statewide cap on greenhouse gas emissions. The Petitioner requests that the Board set a joint public hearing with the Environmental Improvement Board to consider evidence in support of this Petition and, at the conclusion of such hearing, that it adopt new regulations and amend its existing regulations as requested herein.

I. STATEMENT OF REASONS: The Board should grant this Petition and adopt the proposed regulatory changes for the following reasons:

A. The world scientific community has long acknowledged the substantial evidence of unabated global warming caused by anthropogenic emissions of Green House Gases (GHGs). It is well-documented that Global warming is already causing adverse impacts on the human and natural environment, including New Mexico. These impacts will, unless abated, increase in severity over time. *See, e.g.,* United Nations, Intergovernmental Panel on Climate Change (IPCC), *Reports, and* U.S. Global Change Research Program, *Report of the Southwest Regional*

Assessment Group: Preparing for a Climate Change (2000).

B. The IPCC has concluded that developed countries must reduce emissions 25-40% below 1990 levels by 2020 in order to stabilize CO₂ levels at 450ppm, which is still substantially above pre-industrial levels. IPCC, *FOURTH ASSESSMENT: WORKING GROUP III REPORT, Mitigation of Climate Change*, Ch.13.3.3.3, Box 13.7 at 776. (2007). James Hanson of NASA's Goddard Institute for Space Studies and other notable climate scientists argue that atmospheric levels of CO₂ must be reduced even further—to 350 ppm—in order to avoid the most catastrophic consequences of global warming. Hansen, J., et al., *Target atmospheric CO₂: Where Should Humanity Aim?* 2 Open Atmos. Sci. J. 217 (2008).

C. If New Mexico and other jurisdictions fail to substantially and timely reduce their emissions of GHGs, New Mexico and the world will suffer substantial and potentially irreversible catastrophic economic, health and environmental consequences. These consequences for New Mexico and the Southwest Region include, but are not limited to:

1. Increased variability in the amount of precipitation;
2. Increasing summer temperatures;
3. Increased flooding and floods of greater intensity and resulting threats to public health, the environment and property;
4. Increased drought and water scarcity;
5. Changes to ecosystems affecting:
 - a) production of additional vectors for transmission of dengue fever, encephalitis, and forms of Hantavirus;

- b) Increased production of flammable vegetation and greater likelihood of forest fires;
- c) Increased prevalence of certain species at the expense of predator species, e.g., rodents and insects that damage crops and provide vectors for the spread of infectious diseases;
- d) Extinction of plant and animal species that are unique to New Mexico and upon which humans and animals depend for food and other resources; and
- e) Degradation and depletion of water supplies.

II. Statutory Authority: The Board is authorized to grant this Petition 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 ROA 1994 Section 9-5-1-4.

III. Estimated Time of Hearing: Three to five days.

IV. Proposed Regulatory Changes (See Attachments 1-4).

V. CONCLUSION

Supporting evidence for the above requested changes to the Board's regulations will be provided at a public hearing. Petitioners contend, as stated above, that the requested changes are consistent with the Board's statutory authority and responsibility and that the requested changes are essential to safeguard the human and natural environment of New Mexico.

WHEREFORE, Petitioner respectfully requests the Board to set a joint public hearing with the New Mexico Environmental Improvement Board to hear evidence in support of this

Petition and, at the conclusion of this hearing, to adopt new regulations and amend existing regulations as requested herein.

Respectfully submitted:

NEW MEXICO ENVIRONMENTAL LAW
CENTER

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CERTIFICATION

I hereby certify that on January 27, 2009, an original and nine copies of the foregoing Petition and Request for Hearing were hand-delivered to:

Janice Amend
Air Quality Control Board Liaison
Environmental Health Department
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103

And on the same date, a copy of the Petition was sent to the Board attorney at the following email address:

Bill Grantham, Attorney for the Board
bill.grantham@state.nm.us.



R. Bruce Frederick

ATTACHMENT 1

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 1 GENERAL PROVISIONS

20.11.1.1 ISSUING AGENCY: Albuquerque/Bernalillo county air quality control board.
P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[6/14/71. . .12/1/95; 20.11.1.1 NMAC - Rn, 20 NMAC 11.01.I.1, 10/1/02]

20.11.1.2 SCOPE:

A. This part is applicable to the city of Albuquerque and Bernalillo county.

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 board lacks jurisdiction.
[12/1/95. . .8/1/96; 20.11.1.2 NMAC - Rn, 20 NMAC 11.01.I.2, 10/1/02]

20.11.1.3 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 Sections 3 & 4; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.
[6/14/71. . .12/1/95; 20.11.1.3 NMAC - Rn, 20 NMAC 11.01.I.3, 10/1/02; A, 7/1/04]

20.11.1.4 DURATION: Permanent.
[12/1/95; 20.11.1.4 NMAC - Rn, 20 NMAC 11.01.I.4, 10/1/02]

20.11.1.5 EFFECTIVE DATE: The effective date of Part 1 is, December 1, 1995, unless a later date is cited at the end of a section. The effective date of a specific section is located at the end of that section within the historical brackets. As required by the New Mexico Air Quality Control Act, Chapter 74, Article 2, Section 6 NMSA 1978, no regulation or emission control requirement or amendment thereto, or repeal thereof, shall become effective until 30 days after its filing under the State Rules Act, Chapter 14, Article 4 NMSA 1978.
[12/1/95. . .8/1/96; 20.11.1.5 NMAC - Rn, 20 NMAC 11.01.I.5 & A, 10/1/02; A, 12/1/03; A, 7/1/04]

20.11.1.6 OBJECTIVE: The objective of this part is to provide definitions which are generally applicable to Albuquerque/Bernalillo county air quality control board regulations.
[12/1/95; 20.11.1.6 NMAC - Rn, 20 NMAC 11.01.I.6 & A, 10/1/02; A, 7/1/04]

20.11.1.7 DEFINITIONS: The definitions of this part apply unless there is a conflict between definitions in other parts, in which case the definition found in the applicable part shall govern. The definitions include the measurements, abbreviations, and acronyms in Subsection GGGG, of 20.11.1.7 NMAC.

A. "Abnormal operating conditions" means the startup or shutdown of air pollution control device(s) or process equipment.

B. "Administrator" means the administrator of the United States environmental protection agency or his or her designee.

C. "Affected source or facility" means any stationary source, or any other source of air pollutants, that must comply with an applicable requirement.

D. "Air agency, department or EHD" means the environmental health department (EHD) of the city of Albuquerque. The EHD, or its successor agency or authority, as represented by the department director or his/her designee, is the lead air quality planning agency for the Albuquerque/Bernalillo county nonattainment/maintenance area. The EHD serves as staff to the Albuquerque/Bernalillo county air quality control board, (A/BC AQCB), and is responsible for the administration and enforcement of the A/BC AQCB regulations.

E. "Air contaminant or air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant; to the extent the EPA has identified such precursor or precursors for the purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N₂), carbon dioxide (CO₂), oxygen (O₂), methane and ethane.

F. "Air pollution" means the emission, except as such emission occurs in nature, into the outdoor atmosphere of one or more air contaminants in such quantities and duration as may with reasonable probability injure

ATTACHMENT 1

1 human health, animal or plant life, or as may unreasonably interfere with the public welfare, visibility or the reasonable use
2 of property.

3 **G. "Air quality control act"** means the State of New Mexico Air Quality Control Act, Chapter 74, Article
4 2, NMSA 1978 as amended.

5 **H. "Air quality control board, board or A/BC AQCB"** means the Albuquerque/Bernalillo county air
6 quality control board, which is empowered by federal act, the Air Quality Control Act, and ordinances, to prevent or abate
7 air pollution within the boundaries of Bernalillo county, except for Indian lands over which the board lacks jurisdiction.

8 **I. "Allowable emissions"** means:

9 (1) Any department or federally enforceable permit term or condition which limits the quantity, rate, or
10 concentration of emissions of air pollutants on a continuous basis, including any requirements which limits the level of
11 opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to
12 assure continuous reduction that are requested by the applicant and approved by the department or, determined at the time
13 of issuance or renewal of a permit to be an applicable requirement.

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

16 **J. "Ambient"** means that portion of the atmosphere, external to buildings, to which the general public has
17 access.

18 **K. "Applicable requirement"** means any of the following, and includes requirements that have been
19 promulgated or approved by the board or EPA through rulemaking:

20 (1) Any standard or other requirement provided for in the New Mexico state implementation plan approved
21 by EPA, or promulgated by EPA through rulemaking, under Title I, including parts C or D, of the federal act.

22 (2) Any term or condition of any pre-construction permit issued pursuant to regulations approved or
23 promulgated through rulemaking under Title I, including parts C or D, of the federal act.

24 (3) Any standard or other requirement:

25 (a) under Section 111 or 112 of the federal act;

26 (b) of the acid rain program under Title IV of the federal act or the regulations promulgated
27 thereunder;

28 (c) governing solid waste incineration under Section 129 of the federal act;

29 (d) for consumer and commercial products under Section 183(e) of the federal act;

30 (e) of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act,
31 unless the Administrator has determined that such requirements need not be contained in a Title V permit.

32 (4) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act.

33 (5) Any national or state ambient air quality standard.

34 (6) Any increment or visibility requirement under Part C of Title I of the federal act applicable to temporary
35 sources permitted pursuant to Section 504(e) of the federal act.

36 (7) Any regulation adopted by the board in accordance with the Joint Air Quality Control Board Ordinances
37 pursuant to the Air Quality Control Act, and the laws and regulations in effect pursuant to the Air Quality Control Act.

38 **L. "Breakdown, malfunction or upset"** means any sudden, infrequent, and not reasonably preventable
39 failure of air pollution control equipment, or process equipment, which causes a process to not operate in a normal manner.
40 Failures that are caused by process imbalance, poor maintenance or careless operation are not breakdowns.

41 **M. "Carbon dioxide"** means the chemical compound containing one atom of carbon and two atoms of
42 oxygen.

43 **N. "Carbon dioxide equivalent," "CO2 equivalent" or "CO2e"** means a measure for comparing carbon
44 dioxide with other GHGs, based on the quantity of those gases multiplied by the appropriate global warming potential
45 (GWP) factor and commonly expressed as metric tons of carbon dioxide equivalent. GWP factors shall be provided by
46 department guidelines based on the recommendations of the Intergovernmental Panel on Climate Change ("IPCC") or other
47 credible scientific bodies.

48 **[M]O. "Carbon monoxide or CO"** means a colorless, odorless, poisonous gas composed of molecules
49 containing a single atom of carbon and a single atom of oxygen with a molecular weight of 28.01 g/mole.

50 **[N]P. "Chemical process"** means any manufacturing processing operation in which one or more changes in
51 chemical composition or chemical properties are involved.

52 **Q. "Climate nuisance"** means (1) causing or substantially contributing to an exceedance of any applicable
53 allowance, cap, or other limitation on greenhouse gas emissions imposed under state or federal law; or (2) failing to
54 implement cost-effective means that could substantially reduce the annual emission of greenhouse gases from a source,
55 thereby preventing the source from unreasonably contributing to the accumulation of greenhouse gases in the atmosphere.

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1 [O]R. “Coal burning equipment” means any device used for the burning of coal for the primary purpose of
2 producing heat or power by indirect heat transfer in which the products of combustion do not come into direct contact with
3 other materials.

4
5 [P]S. “Commenced” means that an owner or operator has undertaken a continuous program of construction or
6 that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete, within
7 a reasonable time, a continuous program of construction or modification.

8 [Q]I. “Construction” means fabrication, erection, or installation of an affected facility.

9 [R]U. “Crematory” means any combustion unit designed and used solely for cremating human or animal
10 remains or parts and tissues thereof, and other items normally associated with the cremation process, but not including
11 pathological waste.

12 [S]V. “Department” means the Albuquerque environmental health department, which is the administrative
13 agency of the Albuquerque/Bernalillo county air quality control board.

14 W. “Direct emissions of greenhouse gases” means emissions from sources at the source.

15 [F]X. “Director” means the administrative head of the Albuquerque environmental health department or a
16 designated representative(s).

17 [U]Y. “Emission limitation or standard” means a requirement established by EPA, the State Implementation
18 Plan (SIP), the Air Quality Control Act, local ordinance, permit, or board part or regulation, that limits the quantity, rate or
19 concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any
20 requirements relating to the operation or maintenance of a source to assure continuous reduction.

21 [V]Z. “EPA” means the United States environmental protection agency or the EPA’s duly authorized
22 representative.

23 [W]AA. “Excess emissions” means emissions of an air pollutant in excess of an emission limit or standard.

24 [X]BB. “Excess emissions report” means a report submitted by a stationary source at the request of the
25 department in order to provide data on the source’s compliance with emission limits and operating parameters.

26 [Y]CC. “Federal act, act or CAA” means the Federal Clean Air Act, 42 U.S.C. Section 7401 through 7671 et
27 seq., as amended.

28 [Z]DD. “Federal class I wilderness areas” means areas designated by the EPA as such. Federal class I
29 wilderness areas within 100 kilometers of Bernalillo county are Bandelier wilderness, Pecos wilderness, and San Pedro
30 Parks wilderness.

31 [AA]EE. “Fluid” means either of the two states of matter, liquid or gaseous.

32 [BB]FF. “Fugitive emissions” means any emissions which cannot reasonably pass through a stack, chimney,
33 vent, or other functionally-equivalent opening or is not otherwise collected, unless the emission is otherwise regulated by
34 the federal act, the Air Quality Control Act, or the laws and regulation in effect pursuant to the act.

35 [CC]GG. “Grain” means that unit of weight, which is equivalent to 0.0648 grams.

36 HH. “Greenhouse gas” means any of the following: carbon dioxide, methane, nitrous oxide,
37 hydrofluorocarbons, perfluorocarbons or sulfur hexafluoride.

38 [DD]II. “Hazardous air pollutant” means an air contaminant, which has been classified pursuant to the federal
39 act, the Air Quality Control Act, or laws and regulations in effect pursuant to the act.

40 [EE]JJ. “Hydrocarbons or HC” means any chemical compound of a class of aliphatic, cyclic, or aromatic
41 chemical compounds containing mostly hydrogen and carbon. Hydrocarbons are highly reactive in the presence of
42 nitrogen oxides and sunlight. All are precursors to more serious air pollutants such as ozone and nitrogen dioxide.

43 KK. “Hydrofluorocarbons” means gaseous chemical compounds containing only hydrogen, carbon, and
44 fluorine atoms.

45 [FF]LL. “Hydrogen sulfide or H₂S” means the chemical compound containing two atoms of hydrogen and one
46 of sulfur with a molecular weight of 34.07 g/mole.

47 [GG]MM. “Incinerator” means any furnace used in the process of burning solid waste for the purpose of
48 reducing the volume, by removing combustible matter.

49 NN. “Indirect emissions of greenhouse gases” means emissions that are a consequence of the operation of
50 the source, but which occur at a source owned or controlled by another entity.

51 [HH]OO. “Inedible animal by-product processing” means operations primarily engaged in rendering,
52 cooking, drying, dehydration, digesting, evaporating and/or concentrating of animal proteins and fats.

53 [H]PP. “Kraft mill” means any pulping process, which uses an alkaline solution for a cooking liquor.

54 [J]J]QQ. “Lead or Pb” means a heavy metal, with a molecular weight of 207.19 g/mole that is hazardous to
55 health if breathed or swallowed.

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1 **[KK]RR.** **“Modification”** means any physical change in or change in the method of operation of a
2 stationary source which increases the potential to emit any air contaminant emitted by the stationary source or which
3 results in the emission of any air contaminant not previously emitted.

4 **[LL]SS.** **“New source”** means any stationary source, the construction or modification of which is commenced
5 after the filing of a regulation applicable to the stationary source.

6 **[MM]TT.** **“Nitrogen dioxide or NO₂”** means a reddish brown, poisonous gas composed of molecules
7 containing a single atom of nitrogen and two of oxygen with a molecular weight of 46.0 g/mole.

8 **[NN]UU.** **“Nitrogen oxides or NO_x”** is a class of chemicals containing varying quantities of nitrogen and
9 oxygen that are created from combustion processes taking place at high temperatures and high pressures (e.g., inside
10 automotive engine cylinders or in high temperature boilers). Examples of nitrogen oxides are NO, NO₂, NO₃, N₂O₂, and
11 N₂O₅. Nitrogen oxides are also referred to as oxides of nitrogen.

12 **[OO]VV.** **“NMAC”** means New Mexico administrative code, which contains the rules adopted by all
13 rulemaking agencies of the state of New Mexico and the rules adopted by the A/BC AQCB.

14 **[PP]WW.** **“Open burning”** means the combustion of any material without the following characteristics:

15 (1) control of combustion air to maintain adequate temperature for efficient combustion;

16 (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and
17 mixing for complete combustion; and

18 (3) emission controls for the gaseous combustion products.

19 **[QQ]XX.** **“Operator”** means the person(s) responsible for the overall operation of a source.

20 **[RR]YY.** **“Owner”** means the person(s) who owns a source or part of a source.

21 **[SS]ZZ.** **“Ozone or O₃”** means a pungent, colorless gas composed of molecules containing three atoms of oxygen
22 with a molecular weight of 48.0 g/mole.

23 **[TT]AAA.** **“Part”** means the regulation number in the NMAC.

24 **[UU]BBB.** **“Particulate matter or PM”** means any airborne finely divided solid or liquid material such as
25 dust, smoke, mist, fumes or smog found in air or emissions.

26 **[VV]CCC.** **“Particulate matter emissions”** means all finely divided solid or liquid material, other than
27 uncombined water, emitted to the ambient air as measured by the reference method in 40 CFR 60, Appendix A, Method 5,
28 or an equivalent method approved by the EPA.

29 **[WW]DDD.** [Reserved]

30 **[XX]EEE.** **“Pathological waste destructor”** means any equipment, which is used to dispose of
31 pathological waste by combustion or other process, which is approved by EPA.

32 **FFF.** “Perfluorocarbons” means gaseous chemical compounds containing only carbon and fluorine
33 atoms.

34 **[YY]GGG.** **“Performance test”** means the data, which is the result of a test performed as required by the
35 department to determine compliance.

36 **[ZZ]HHH.** **“Permit”** means any permit or group of permits, modifications, renewals or revisions
37 authorizing the construction or operation of a stationary source pursuant to the federal act, the Air Quality Control Act, or
38 laws and regulations in effect pursuant to the act.

39 **[AAA]III.** **“Permittee”** means the owner or operator identified in any permit application or permit.

40 **[BBB]JJJ.** **“Person”** means any individual, partnership, firm, public or private corporation, association,
41 trust, estate, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns.

42 **[CCC]KKK.** **“Photochemical oxidants”** means an air pollutant, which is formed by the action of sunlight on
43 oxides of nitrogen and hydrocarbons.

44 **[DDD]LLL.** **“PM₁₀, PM_{2.5} or PM₁”** means particulate matter with an aerodynamic diameter less than or
45 equal to 10, 2.5, or 1 micrometers, respectively.

46 **[EEE]MMM.** **“PM_{2.5} emissions”** means finely divided solid or liquid material with an aerodynamic diameter
47 less than or equal to a nominal 2.5 micrometers emitted into the ambient air as measured by the reference method in 40
48 CFR Part 50, Appendix L, approved by the EPA.

49 **[FFF]NNN.** **“PM₁₀ emissions”** means finely divided solid or liquid material with an aerodynamic diameter
50 less than or equal to a nominal 10 micrometers emitted into the ambient air as measured by the reference method in 40
51 CFR Part 50, Appendix J and M, or equivalent method approved by the EPA

52 **[GGG]OOO.** **“Pollution control device or air pollution control equipment”** means any device, equipment,
53 process or combination thereof, the operation of which may limit, capture, reduce, confine, or otherwise control regulated
54 air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another
55 physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers,
56 cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

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1 [HHH]PPP. “**Portable or temporary stationary source**” means a stationary source capable of changing its
2 location with limited dismantling or reassembly which is associated with a specific construction project or increased
3 production demand.

4 [HH]QQQ. “**Potential to emit or pre-controlled emission rate**” means the maximum capacity of a
5 stationary source to emit any air contaminant under its physical and operational design. Any physical or operational
6 limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on
7 hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its
8 design if the limitation is federally enforceable or is included in a permit issued by the department. However, the potential
9 to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

10 [JJJ]RRR. “**Process equipment**” means any equipment used for storing, handling, transporting, processing
11 or changing any materials whatsoever but excluding that equipment specifically defined in these regulations as incinerators,
12 crematories, pathological waste destructors, pathological destructors and medical waste destructors.

13 [KKK]SSS. “**Process weight**” means the total weight of all materials introduced into any specific process,
14 which causes any discharge of air contaminants into the atmosphere. Solid fuels introduced into any specific process will
15 be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

16 [LLL]TTT. “**Process weight rate**” means the hourly rate derived by dividing the total process weight by the
17 number of hours in one complete operation from the beginning of any given process to the completion thereof, or from the
18 beginning to the completion of a typical portion thereof, excluding any time during which the equipment is idle.

19 [MMM]UUU. [Reserved]

20 [NNN]VVV. “**Regulated air pollutant**” means the following:

- 21 (1) any pollutant for which a national, state, or local ambient air quality standard has been promulgated;
- 22 (2) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;
- 23 (3) any Class I or II substance subject to any standard promulgated under or established by Title VI of the
24 federal act; or
- 25 (4) any pollutant subject to a standard promulgated under Section 112 or any other requirements established
26 under Section 112 of the federal act.

27 [OOO]WWW. “**Responsible official**” means one of the following:

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

32 (a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding
33 \$25 million (in second quarter 1980 dollars); or

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

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

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

40 (4) For an acid rain source: the designated representative (as defined in Section 402(26) of the federal act)
41 in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated
42 thereunder are concerned, and for any other purposes under 40 CFR, Part 70.

43 [PPP]XXX. “**Shutdown**” means the cessation of operation of any air pollution control equipment, process
44 equipment or process for any purpose.

45 [QQQ]YYY. [Reserved]

46 [SSS]ZZZ. “**Smoke**” means small gas-borne particles resulting from incomplete combustion, consisting
47 predominantly, but not exclusively, of carbon, soot and combustible material.

48 [TTT]AAAA. “**Solid waste**” means garbage; refuse; yard waste; food wastes; plastics; leather; rubber; sludge;
49 and other discarded combustible or noncombustible waste, including solid, liquid, semisolid; or contained gaseous material
50 resulting from industrial, commercial, mining, and agricultural operations, and from community or residential activities,
51 and from waste treatment plants, water supply treatment plants, or air pollution control facilities; but does not include solid
52 or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges
53 which are point sources subject to permit under Section 402 of the Federal Water Pollution Control Act, or source, special
54 nuclear, or byproduct material as defined by the Atomic Energy Act.

55 [UUU]BBBB. [Reserved]

56 [VVV]CCCC. “**Stack, chimney, vent, or duct**” means any conduit or duct emitting particulate or gaseous
57 emissions into the open air.

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1 [WWW]DDDD. “Standard conditions” means the conditions existing at a temperature of 70° F (25° C) and
2 pressure of 14.7 psia (760 mmHg).

3 [XXX]EEEE. “Standard cubic foot” means a measure of the volume of one cubic foot of gas at standard
4 conditions.

5 [YYY]FFFF. “Startup” means the setting into operation of any air pollution control equipment, process
6 equipment or process for any purpose.

7 [ZZZ]GGGG. “Stationary source” means any building, structure, facility or installation, which is either
8 permanent or temporary, excluding a private residence, that emits or may emit any regulated air pollutant or any pollutant
9 listed under Section 112(b) of the federal act, the Air Quality Control Act, or the laws and regulations in effect pursuant to
10 the act. Several buildings, structures, facilities, or installations, or any combinations will be treated as a single stationary
11 source if they belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are
12 under the control of the same person, or persons, or are under common control. Pollutant-emitting activities shall be
13 treated as the same industrial grouping if they have the same first two digits of an applicable standard industrial
14 classification (SIC) code as described in the standard industrial classification manual.

15 [AAAA]HHHH. “Sulfur dioxide or SO₂” means a pungent, colorless, poisonous gas composed of molecules
16 containing a single atom of sulfur and two atoms of oxygen with a molecular weight of 64.07 g/mole.

17 III. “Sulfur hexafluoride” means the chemical compound containing one atom of sulfur and six atoms of
18 fluorine

19 [BBBB]JJJJ. “Total reduced sulfur” means any combination of sulfur compounds, except sulfur dioxide and
20 free sulfur, which test as reduced sulfur, including, but not limited to, hydrogen sulfide, methyl mercaptan, and ethyl
21 mercaptan.

22 [CCCC]KKKK. “Total suspended particulate or TSP” means particulate matter as measured by the method
23 described in 40 CFR Part 50, Appendix B.

24 [DDDD]LLLL. “Vapors” means the gaseous form of a substance, which exists in the liquid or solid state at
25 standard conditions.

26 [EEEE]MMMM. “Visible emission” means an emission that can be seen because its opacity or optical
27 density is above the threshold of vision.

28 [FFFF]NNNN. “Volatile organic compounds or VOC” means any compound of carbon which participates in
29 atmospheric photochemical reactions excluding carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or
30 carbonates; ammonium carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl
31 chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane
32 (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-
33 114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-
34 134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-
35 tetrafluoroethane (HCFC-124); pentafluoroethane (HCFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane
36 (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely
37 methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds; and, any
38 additional compounds which the EPA determines to have negligible photochemical reactivity.

39 [GGGG]OOOO. “Measurements, abbreviations, and acronyms”

40 A/BC AQCB-Albuquerque/Bernalillo County Air Quality Control Board

41 ABT-Averaging, Banking and Trading (Program)

42 AIRS-Aerometric Information Retrieval System

43 AMPA-Albuquerque Metropolitan Planning Area

44 APCD-Air Pollution Control Division

45 API-American Petroleum Institute

46 AQIA-Air Quality Impact Assessment

47 AQS-Air Quality Services

48 ASE-National Institute for Automotive Service Excellence

49 ASTM-American Society for Testing and Materials

50 ATS-Allowance Tracking System

51 BACT-Best Available Control Technology

52 Bhp-Brake horsepower

53 Btu-British thermal unit

54 C-Celsius

55 CAA(A)-federal Clean Air Act (Amendments)

56 CEM-Continuous Emission Monitor

57 CFC(s) -Chlorofluorocarbon(s)

ATTACHMENT 1

1	cfh -cubic feet per hour
2	cfm -cubic feet per minute
3	CFR -Code of Federal Regulations
4	CO₂ -carbon dioxide.
5	<u>CO₂e - Carbon dioxide equivalent</u>
6	CO -carbon monoxide.
7	COG -Mid-Region Council of Governments
8	CMAQ -Congestion Mitigation and Air Quality
9	cu. in. -cubic inch(es)
10	DER -Discrete Emission Reduction
11	DOE -Department of Energy
12	DOT-U.S. Department of Transportation
13	DPM -Development Process Manual
14	DRB -Development Review Board
15	EA -Environmental Assessment
16	EHD -Environmental Health Department
17	EI -Emission Inventory
18	EIS -Environmental Impact Statement
19	EPA -U.S. Environmental Protection Agency
20	EPC -Environmental Planning Commission
21	ERC -Emission Reduction Credit
22	F -Fahrenheit.
23	FHWA -Federal Highway Administration, DOT
24	FMVCP -Federal Motor Vehicle Control Program
25	FR -Federal Register
26	ft. -feet
27	FTA -Federal Transit Administration, DOT
28	g -gram(s)
29	g/mole -grams per mole
30	gal -U.S. gallon(s)
31	<u>GHG - Greenhouse gas</u>
32	GVW -Gross vehicle weight
33	GVWR -Gross vehicle weight rating
34	<u>GWP - global warming potential</u>
35	h -hour(s)
36	HAP -Hazardous Air Pollutants
37	HC -hydrocarbon(s)
38	Hg -mercury
39	hp. -horsepower
40	I/M -Inspection/Maintenance
41	in. -inch(es)
42	<u>IPCC - Intergovernmental Panel on Climate Change</u>
43	ISTEA -Intermodal Surface-Transportation Efficiency Act
44	K -Kelvin
45	kg -kilogram(s)
46	km -kilometer(s)
47	kPa -kilopascal(s)
48	lb. -pound(s)
49	lb/day -pounds per day
50	lb-ft -pound-feet
51	lb/hr -pounds per hour
52	lb/yr -pounds per year
53	LAER -Lowest Achievable Emission Rate
54	LNG -Liquefied Natural Gas
55	LPG -Liquefied Petroleum Gas
56	LRTP -Long Range Transportation Plan
57	m -meter(s)

ATTACHMENT 1

1	MACT -Maximum Achievable Control Technology
2	max. -maximum
3	MCO -Manufacturer's Certificate of Origin
4	µg -microgram
5	µg/m³ -microgram per cubic meter
6	mg -milligram(s)
7	mg/m³ -milligram per cubic meter
8	mi. -mile(s)
9	min -minute(s)
10	ml -milliliter(s)
11	mm -millimeter(s)
12	MMBtu -million Btu
13	mmHg -millimeters of Mercury
14	mph -miles per hour
15	MPO -Metropolitan Planning Organization
16	MRCOG -Mid-Region Council of Governments
17	MSERC -Mobile Source Emission Reduction Credits
18	MSMTC -Mobile Source Modeling Technical Committee
19	MTBE -methyl tertiary butyl ether
20	MVD -Motor Vehicle Division
21	MWe -megawatt electrical
22	N₂ -nitrogen.
23	NAAQS -National Ambient Air Quality Standards
24	NAMS -National Air Monitoring Station
25	NDIR -nondispersive infrared
26	NEPA -National Environmental Policy Act
27	NESCAUM/MARAMA -Northeast States for Coordinated Air Use Management/Mid-Atlantic Regional Air Management Association
28	
29	NESHAP -National Emission Standards for Hazardous Air Pollutants
30	NIST -National Institute of Standards and Technology
31	NM -New Mexico
32	NMAC -New Mexico Administrative Code
33	NMSA -New Mexico Statutes Annotated
34	NO -nitric oxide
35	NO₂ -nitrogen dioxide
36	NO_x -oxides of nitrogen
37	No -number
38	NOV -Notice of Violation
39	NMHC -Non-Methane Hydrocarbons
40	NSPS -New Source Performance Standards
41	NSR -New Source Review
42	O₂ -oxygen
43	O₃ -ozone
44	OMTR -Open Market Trading Rule
45	OTAG -Ozone Transport Assessment Group
46	OTC -Ozone Transport Commission
47	Pb -lead
48	PIC -Public Involvement Committee
49	PM -Particulate Matter
50	PM_{2.5} -Particulate Matter Less Than 2.5 microns
51	PM₁₀ -Particulate Matter Less Than 10 microns
52	ppm -parts per million by volume
53	ppm C -parts per million, carbon
54	PSD -Prevention of Significant Deterioration
55	PSI -Pollutant Standard Index
56	psi -pounds per square inch
57	psia -pounds per square inch absolute

ATTACHMENT 1

- 1 **psig**-pounds per square inch gauge
- 2 **PTE**-Potential To Emit
- 3 **PWD**-Pathological Waste Destructor
- 4 **QF**-Qualifying Facility
- 5 **R**-Rankin
- 6 **RACT**-Reasonably Available Control Technology
- 7 **R&D**-Research & Development
- 8 **RECLAIM**-Regional Clean Air Incentives Market
- 9 **ROG**-Reactive Organic Gases
- 10 **rpm**-revolutions per minute
- 11 **RTA**-Regional Transit Authority
- 12 **RTC**-RECLAIM Trading Credit
- 13 **RVP**-Reid vapor pressure
- 14 **s**-second(s)
- 15 **SAE**-Society of Automotive Engineers
- 16 **SBAP**-Small Business Assistance Program
- 17 **scf**-standard cubic foot
- 18 **SI**-International system of units
- 19 **SIP**-State Implementation Plan
- 20 **SLAMS**-State and Local Air Monitoring Station
- 21 **SMOG**-SMoke + fOG
- 22 **SO₂**-Sulfur Dioxide
- 23 **State DOT**-New Mexico Department of Transportation
- 24 **STIP**-State Transportation Improvement Program
- 25 **TCC**-Transportation Coordinating Committee
- 26 **TCM**-Transportation Control Measure
- 27 **TES**-Transportation Evaluation Study
- 28 **TIP**-Transportation Improvement Program
- 29 **TMA**-Transportation Management Association
- 30 **ton/yr**-tons per year
- 31 **TPTG**-Transportation Program Task Group
- 32 **tpy**-tons per year
- 33 **TSP**-Total Suspended Particulate
- 34 **UPWP**-Unified Planning Work Program
- 35 **UTPPB**-Urban Transportation Planning Policy Board
- 36 **U.S.**-United States
- 37 **UV**-Ultraviolet
- 38 **VE**-Visible Emission(s)
- 39 **VIN**-Vehicle Identification Number
- 40 **VMT**-Vehicle Miles Traveled
- 41 **VOC**-Volatile Organic Compounds
- 42 **VPMD**-Vehicle Pollution Management Division
- 43 **%**-percent
- 44 **°**-degree(s)
- 45 [3/21/77, . . .11/12/81, 11/21/81, 3/16/89, 6/16/92, 2/26/93, 9/23/94, 12/16/94, 12/1/95, 8/1/96; 20.11.1.7 NMAC - Rn, 20
- 46 NMAC 11.01.I.7, 10/1/02; A, 7/1/04]
- 47
- 48 **20.11.1.8 VARIANCES:** [Reserved]
- 49 [12/1/95; 20.11.1.8 NMAC - Rn, 20 NMAC 11.01.I.8, 10/1/02]
- 50
- 51 **20.11.1.9 SAVINGS CLAUSE:** Any amendment to 20.11.1 NMAC which is filed with the state records center
- 52 shall not affect actions pending for violation of a city or county ordinance, Air Quality Control Board Standard 1, Board
- 53 Regulations No. 1, 2, and 26, or Part 1. Prosecution for a violation under prior regulation wording shall be governed and
- 54 prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed.
- 55 [12/1/95; 20.11.1.9 NMAC - Rn, 20 NMAC 11.01.I.9, 10/1/02]
- 56

ATTACHMENT 1

1 **20.11.1.10 SEVERABILITY:** If any section, paragraph, sentence, clause or word of this part or any federal
2 standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision
3 shall not affect the validity of remaining provisions of this part.
4 [12/1/95; 20.11.1.10 NMAC - Rn, 20 NMAC 11.01.I.10, 10/1/02]

5
6 **20.11.1.11 DOCUMENTS:** Documents incorporated and cited in this part may be viewed at the Albuquerque
7 environmental health department, 400 Marquette NW, Albuquerque, NM.
8 [12/1/95; 20.11.1.11 NMAC - Rn, 20 NMAC 11.01.I.11 & A, 10/1/02]

9
10 **20.11.1.12** [Reserved]
11 [12/1/95; 20.11.1.12 NMAC - Rn, 20 NMAC 11.01.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.01.II.1, 10/1/02]

12
13 **20.11.1.13** [Reserved]
14 [11/12/81. . . 3/24/82, 8/1/96; 20.11.1.13 NMAC - Rn, 20 NMAC 11.01.II.2, 10/1/02; Repealed, 7/1/04]

15
16 **20.11.1.14 INTERPRETATION:** Except as expressly provided to the contrary in these regulations, whenever two
17 or more parts of these regulations limit, control or regulate the emissions of a particular air contaminant, the more
18 restrictive or stringent shall govern.
19 [3/24/82; 20.11.1.14 NMAC - Rn, 20 NMAC 11.01.II.3, 10/1/02]

20
21 **HISTORY OF 20.11.1 NMAC:**

22 **Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public
23 records - state records center and archives.
24 Resolution No. 1, Air Pollution Control Regulations of The Albuquerque Bernalillo County Air Quality Control Board,
25 8/6/71;
26 Regulation No. 1, Air Pollution Control Regulations, 6/6/73;
27 Regulation No. 1, Air Pollution Control Regulations, 7/9/73;
28 Regulation No. 1, Air Pollution Control Regulations, 3/21/77;
29 Regulation No. 1, Resolutions - Air Pollution Control Regulations, 3/24/82;
30 Regulation No. 1, Resolution - Air Pollution Regulations, 6/18/86;
31 Resolution No. 2, Ambient Air Quality Standards of The Albuquerque Bernalillo County Air Quality Control Board,
32 8/6/71;
33 Resolution No. 2, Ambient Air Quality Standards of The Albuquerque Bernalillo County Air Quality Control Board,
34 6/6/73;
35 Standard No. 1, Ambient Air Quality Standards, 11/12/81;
36 Regulation No. 2, Definitions, 3/24/82;
37 Regulation No. 2, Definitions, 1/3/85;
38 Regulation No. 2, Definitions, 3/16/89;
39 Regulation No. 2, Definitions, 11/27/91;
40 Regulation No. 2, Definitions, 6/16/92;
41 Regulation No. 26, Interpretation, 3/24/82.

42
43 **History of Repealed Material:**

44
45 **Other History:** Regulation No. 1, Air Pollution Regulations, filed 6/18/86; Standard No. 1, Ambient Air Quality
46 Standards, filed 11/12/81; Regulation No. 2, Definitions, filed 6/16/92; and Regulation No. 26, Interpretation, filed
47 3/24/82; were all **renumbered and reformatted** into first version of the New Mexico Administrative Code as 20 NMAC
48 11.01, General Provisions, filed 10/27/95.
49 20 NMAC 11.01, General Provisions, filed 10/27-95 was **renumbered, reformatted, amended and replaced** by 20.11.1
50 NMAC, General Provisions, effective 10/1/02.
51

ATTACHMENT 2

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
3 **PART 8 AMBIENT AIR QUALITY STANDARDS**
4

5 **20.11.8.1 ISSUING AGENCY:** Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box
6 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
7 [20.11.8.1 NMAC - N, 7/1/04]
8

9 **20.11.8.2 SCOPE:**

10 **A. 20.11.8 NMAC is applicable to the city of Albuquerque and Bernalillo county.**
11 **B. Exempt:** 20.11.8 NMAC does not apply to sources within Bernalillo county, which are located
12 on Indian lands over which the Albuquerque/Bernalillo county air quality control board lacks jurisdiction.
13 [20.11.8.2 NMAC - N, 7/1/04]
14

15 **20.11.8.3 STATUTORY AUTHORITY:** 20.11.8 NMAC is adopted pursuant to the authority provided in
16 the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5C; the Joint Air Quality Control
17 Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 & 4; the Joint Air Quality Control Board Ordinance,
18 Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.
19 [20.11.8.3 NMAC - N, 7/1/04]
20

21 **20.11.8.4 DURATION:** Permanent.
22 [20.11.8.4 NMAC - N, 7/1/04]
23

24 **20.11.8.5 EFFECTIVE DATE:** The effective date of Part 8 is, July 1, 2004, unless a later date is cited at
25 the end of a section. The effective date of a specific section is located at the end of each section within the historical
26 brackets. As required by the New Mexico Air Quality Control Act, Chapter 74, Article 2, Section 6 NMSA 1978,
27 no regulation or emission control requirement or amendment thereto, or repeal thereof, shall become effective until
28 30 days after its filing under the State Rules Act, Chapter 14, Article 4 NMSA 1978.
29 [20.11.8.5 NMAC - N, 7/1/04]
30

31 **20.11.8.6 OBJECTIVE:** The objective of 20.11.8 NMAC is to adopt local ambient air quality standards
32 that are identical to the federal National Primary and Secondary Ambient Air Quality Standards codified at 40 CFR
33 Part 50, and to adopt applicable state Ambient Air Quality Standards codified at 20.2.3 NMAC.
34 [20.11.8.6 NMAC - N, 7/1/04]
35

36 **20.11.8.7 DEFINITIONS:** The definitions in 20.11.1 NMAC apply to 20.11.8 NMAC.
37 [20.11.8.7 NMAC - N, 7/1/04]
38

39 **20.11.8.8 SAVINGS CLAUSE:** Any amendment to Ambient Air Quality Standards, 20.11.8 NMAC, that
40 is filed with the state records center, shall not affect actions pending for violation of a city or county ordinance, the
41 air quality regulations for Albuquerque and Bernalillo county or a permit issued by the department. Prosecution for
42 a violation under a prior statute, ordinance, regulation or permit shall be governed and prosecuted under the statute,
43 ordinance or regulation in effect at the time the violation was committed.
44 [20.11.8.8 NMAC - N, 7/1/04]
45

46 **20.11.8.9 SEVERABILITY:** If any section, paragraph, sentence, clause or word of 20.11.8 NMAC or any
47 federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court,
48 the decision shall not affect the validity of remaining provisions of 20.11.8 NMAC.
49 [20.11.8.9 NMAC - N, 7/1/04]
50

51 **20.11.8.10 DOCUMENTS:** Documents incorporated and cited in 20.11.8 NMAC may be viewed at the
52 Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.
53 [20.11.8.10 NMAC - N, 7/1/04]
54

55 **20.11.8.11 INCORPORATION OF FEDERAL AMBIENT AIR QUALITY STANDARDS:** Except as
56 otherwise provided, the National Primary and Secondary Ambient Air Quality Standards of the United States

ATTACHMENT 2

1 environmental protection agency including the General Provisions thereto, codified at 40 CFR Part 50, as amended
 2 through July 18, 1997, are hereby incorporated into 20.11.8 NMAC. Section 20.11.8.13 NMAC is a summary of the
 3 federal and state standards incorporated in 20.11.8 NMAC.
 4 [20.11.8.11 NMAC - N, 7/1/04]

5
 6 **20.11.8.12 INCORPORATION OF STATE AMBIENT AIR QUALITY STANDARDS:**

7
 8 **A.** Except as otherwise provided, the state Ambient Air Quality Standards of the environmental
 9 improvement board codified at 20.2.3 NMAC, effective October 31, 2002, are hereby incorporated into 20.11.8
 10 NMAC. Section 20.11.8.13 NMAC is a summary the federal and state standards incorporated in 20.11.8 NMAC.

11 **B.** The greenhouse gas emissions level of the environmental improvement board codified at 20.2.1
 12 NMAC, effective 2009, is hereby incorporated into 20.11.8 NMAC.
 13 [20.11.8.12 NMAC - N, 7/1/04]

14
 15 **20.11.8.13 SUMMARY OF FEDERAL AND STATE AMBIENT AIR QUALITY STANDARDS:**

17 <u>Pollutant</u>	18 <u>Standards</u>		
	19 Federal Primary	20 Federal Secondary	21 New Mexico State
22 Carbon Monoxide (CO)			
23 8-hour average	24 9.0 ppm	25 none	26 8.7 ppm
27 1-hour average	28 35 ppm	29 none	30 13.1 ppm
31 Nitrogen Dioxide (NO₂)			
32 24-hour average	33 none	34 none	35 0.10 ppm
36 Annual arithmetic mean	37 0.053 ppm	38 0.053 ppm	39 0.05 ppm
40 Ozone (O₃)			
41 1-hour average	42 0.120 ppm	43 0.120 ppm	44 none
45 8-hour average	46 0.08 ppm	47 0.08 ppm	48 none
49 Sulfur Dioxide (SO₂)			
50 24-hour average	51 0.14 ppm	52 none	53 0.10 ppm
54 3-hour average	55 none	56 0.5 ppm	none
57 Annual arithmetic mean	58 0.03 ppm	59 none	60 0.02 ppm
61 Particulate Matter (PM_{2.5})			
62 24-hour average	63 65 µg/m ³	64 65 µg/m ³	65 none
66 Annual arithmetic mean	67 15 µg/m ³	68 15 µg/m ³	69 none
70 Particulate Matter (PM₁₀)			
71 24-hour average	72 150 µg/m ³	73 150 µg/m ³	74 none
75 Annual arithmetic mean	76 50 µg/m ³	77 50 µg/m ³	78 none
79 Lead (Pb)			
80 Quarterly arithmetic mean	81 1.5 µg/m ³	82 1.5 µg/m ³	83 none
84 Hydrogen Sulfide			

ATTACHMENT 2

1	1-hr average	none	none	0.010 ppm
2				
3	Total Reduced Sulfur			
4	1/2-hour average	none	none	0.003 ppm
5				
6	Particulate Matter (TSP)			
7	24-hour average	none	none	150 µg/m ³
8				
9	7-day average	none	none	110 µg/m ³
10				
11	30-day average	none	none	90 µg/m ³
12				
13	Annual geometric mean	none	none	60 µg/m ³
14	[20.11.8.13 NMAC - N, 7/1/04]			
15				

16 **20.11.8.14 INTERPRETATION:** Except as expressly provided to the contrary in these regulations,
17 whenever two or more parts of these regulations limit, control or regulate the emissions of a particular air
18 contaminant, the more restrictive or stringent shall govern.
19 [20.11.8.14 NMAC - N, 7/1/04]

20
21 **HISTORY OF 20.11.8 NMAC:**
22 None

23

ATTACHMENT 3

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
3 **PART 41 AUTHORITY TO CONSTRUCT**
4

5 **20.11.41.1 ISSUING AGENCY:** Albuquerque/Bernalillo County Air Quality Control Board, P.O. Box
6 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
7 [3/21/77. . .12/1/95; 20.11.41.1 NMAC - Rn, 20 NMAC 11.41.I.1, 10/1/02]
8

9 **20.11.41.2 SCOPE:**

10 **A. Exempt:** This Part does not apply to sources within Bernalillo County, which are located on
11 Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.

12 **B. Applicability:** Prior to commencement, any person planning to construct a new stationary source
13 or modify an existing stationary source of air contaminants such that any of the following emissions thresholds,
14 classifications, or kinds of permits apply as delineated in paragraphs (1) through (3) below, shall obtain a permit
15 from the Department in accordance with the provisions of this Part.

16 **(1) Emissions Thresholds Requiring a Permit:**

17 (a) Any stationary source that will emit one or more regulated air contaminants for which there
18 is a federal, state or local air quality control standard and any single one of which would exceed the following
19 amounts when considered at the source's pre-controlled emission rate:

20 (i) ten (10) pounds per hour, or

21 (ii) twenty-five (25) tons per year.

22 (iii) Any person modifying a stationary source when all of the pollutant emitting
23 activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for
24 which there is a National or New Mexico Ambient Air Quality Standard with a pre-controlled emission rate greater
25 than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the
26 modification.

27 (b) If either of these thresholds is exceeded for any regulated air contaminant, all regulated air
28 contaminants emitted are subject to permit review. Within subsection B of 20.11.41.2 NMAC, the potential emission
29 rate for nitrogen dioxide shall be based on total oxides of nitrogen.

30 (c) Any stationary source which will have a pre-controlled emission rate of lead (Pb), and its
31 compounds, greater than five (5) tons per year measured by a reference method based upon 40 CFR 50, Appendix
32 G.

33 (d) Any major stationary source or major modification, as defined by 20.11.60 NMAC,
34 otherwise meeting the applicability requirements of this Part shall in addition be subject to the permit requirements
35 of 20.11.60 NMAC - PERMITTING IN NONATTAINMENT AREAS, if either of the following conditions applies:

36 (i) The source is or will be located within a nonattainment area for any NAAQS and will
37 emit the air contaminant or contaminants for which the area is in nonattainment, or will emit hydrocarbons in the
38 case of ozone nonattainment; or

39 (ii) The source is or will be located in an area which is in attainment of the NAAQS for
40 the air contaminant or air contaminants which the source will emit but the ambient impact of the emissions from the
41 source will exceed the significance levels of Table 1 in 20.11.60 NMAC, before any consideration of emissions
42 offsets or trades, at any location within an area which is in nonattainment for the air contaminant or air contaminants
43 emitted by the source having such ambient impacts.

44 **(2) Federal Source Classifications:**

45 (a) If the applicant will be constructing, modifying or installing any equipment or process
46 which is subject to 20.11.63 or 64 NMAC.

47 (b) If the source otherwise meets the applicability requirements of this Part but is a major
48 stationary source or a major modification as defined in 20.11.61 NMAC, shall in addition be subject to the permit
49 requirements of 20.11.61 NMAC.

50 (c) If the Department determines that the source will emit a significant amount of an air
51 contaminant for which no federal emissions standard has yet been established but which has been listed in 40 CFR
52 61.01(b) along with the hazardous air pollutants.

53 **(3) Additional Permit Details:**

54 (a) If a source is comprised of more than one unit, a separate permit may be required for each
55 unit which is not substantially interrelated with another unit. A common connection leading to ductwork, pollution
56 control equipment or a single stack shall not, by itself, constitute a substantial interrelationship.

ATTACHMENT 3

1 (b) Although more than one permit regulation (i.e. 20.11.41, 60, 61, 63, and 64 NMAC) may
2 apply to any stationary source nothing in this Part shall be construed to require more than one permit application for
3 each unit proposed for construction or modification. Definitions and provisions contained in specific federal
4 programs apply as pertains to permit review of any air contaminant and source regulated by the federal NSPS,
5 NESHAP, prevention of significant deterioration, visibility or nonattainment requirements.

6 (c) For all sources subject to this Part, applications for Authority-to-Construct permits shall be
7 filed prior to the commencement of construction, modification, or installation. Regardless of the anticipated
8 commencement date, no construction, modification, or installation shall begin prior to issuance of the permit.

9 (4) **Administrative Modifications:** For existing permitted sources that do not otherwise meet the
10 permit modification criteria found in this section, but who wish to voluntarily reduce their permitted emissions may
11 do so through an administrative modification to their permit. Sources submitting an Authority-to-Construct
12 application to reduce their permitted emissions through the administrative modification process will be exempted
13 from the requirements of 20.11.41.12 NMAC, Fees for Permit Application Review, and 20.11.41.14 NMAC, Public
14 Notice and Participation.

15 [3/24/82. . .7/21/87, 6/5/91, 12-16-94, 12/1/95; 20.11.41.2 NMAC - Rn, 20 NMAC 11.41.I.2, 10/1/02]

16
17 **20.11.41.3 STATUTORY AUTHORITY:** This Part is adopted pursuant to the authority provided in the
18 New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board
19 Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance,
20 Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

21 [3/21/77. . .12/1/95; 20.11.41.3 NMAC - Rn, 20 NMAC 11.41.I.3, 10/1/02]

22
23 **20.11.41.4 DURATION:** Permanent.

24 [12/1/95; 20.11.41.4 NMAC - Rn, 20 NMAC 11.41.I.4, 10/1/02]

25
26 **20.11.41.5 EFFECTIVE DATE:** December 1, 1995, unless a later date is cited at the end of a section.

27 [12/1/95; 20.11.41.5 NMAC - Rn, 20 NMAC 11.41.I.5 & A, 10/1/02]

28
29 **20.11.41.6 OBJECTIVE:** The objective of this Part is to insure that new facilities or modified existing
30 facilities will not emit air pollution, which will cause violations of air pollution control regulations upon operation
31 following construction. This procedure will protect the source owner's investment as well as uphold public concern
32 and desire for input prior to commencement of construction of air pollution sources in Bernalillo County.

33 [6/5/91. . .12/1/95; 20.11.41.6 NMAC - Rn, 20 NMAC 11.41.I.6, 10/1/02]

34
35 **20.11.41.7 DEFINITIONS:** This Part as well as 20.11.1, 60, 61, 63 and 64 NMAC use terms with exclusive
36 meanings applicable to construction or modification permits. Throughout these Parts the terms herein defined shall
37 have the following meanings. If there is any apparent conflict among the use of said terms, the meaning specified in
38 this Part shall prevail and apply.

39 **A. "Air Pollution Control Equipment"** means any device, equipment, process or combination
40 thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or
41 convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

42 **B. "Ambient Air"** means the outdoor atmosphere, but does not include the area entirely within the
43 geographical boundaries of the source from which the air contaminants are, or may be, emitted and where public
44 access is restricted within such boundaries.

45 **C. "Commence or Commencement"** means that an owner or operator has undertaken a continuous
46 program of construction or that an owner or operator has entered into a binding contractual obligation to undertake
47 and complete, within a reasonable time, a continuous program of construction.

48 **D. "Construction"** means fabrication, erection, installation or relocation of a stationary source,
49 including but not limited to temporary installations and portable stationary sources.

50 **E. "Federal Clean Air Act or CAA"** means the federal legislation pertaining to air pollution as
51 amended, at 42 U.S.C. 7401, et seq.

52 **F. "Hazardous Air Pollutant"** means an air contaminant, which is listed as a hazardous air pollutant
53 pursuant to Section 112 of the CAA.

54 **G. "Malfunction"** means any air pollution control equipment, process equipment or process which
55 fails to operate in the manner or for the purpose for which it was designed.

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1 **H. “Modification or To Modify”** means to make any physical change in, or change in the method of
2 operation of, a stationary source which results in an increase in the pre-controlled emission rate of any regulated air
3 contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously
4 emitted. Relocation of a portable stationary source that is subject to Subsection B of 20.11.41.2 NMAC, unless
5 within specified permit conditions, shall be considered a modification. These terms do not include:

6 (1) a change in ownership of the source,
7 (2) routine maintenance, repair or replacement,
8 (3) installation of air pollution control equipment, and all related process equipment and materials
9 necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or
10 pursuant to the CAA, or
11 (4) unless previously limited by enforceable permit conditions:
12 (a) an increase in the production rate, if such increase does not exceed the operating design
13 capacity of the source,
14 (b) an increase in the hours of operation, or
15 (c) use of an alternative fuel or raw material if prior to January 6, 1975, the source was capable
16 of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural
17 gas curtailment or emergency allocation or any other lack of supply of natural gas.

18 **I. “National Ambient Air Quality Standards or NAAQS”** means the primary (health based) and
19 secondary (welfare-related) federal ambient air quality standards promulgated by the EPA pursuant to Section 109
20 of the CAA.

21 **J. “National Emission Standards for Hazardous Air Pollutants or NESHAP”** means the
22 regulatory requirements, guidelines and emission limitations promulgated by the EPA pursuant to Section 112 of the
23 CAA.

24 **K. “New Source Performance Standard or NSPS”** means the regulatory requirements, guidelines
25 and emission limitations promulgated by the EPA pursuant to Section 111 of the CAA.

26 **L. “Nonattainment Area”** means for any air contaminant an area which is shown by monitoring
27 data or which is calculated by air quality modeling (or other methods determined by the director of the Department
28 or the administrator of the EPA to be reliable) to exceed either a state or NAAQS for such contaminant, including,
29 but not limited to areas identified under Section 107 (d) (1) (A) through (C) of the CAA.

30 **M. “Operator”** means the specific local organization or subdivision of the firm or person, whether
31 private, corporate, or public, that manages, on location, the operations of the stationary source.

32 **N. “Permit”** means a document issued by the Department, pursuant to the Air Quality Control Act
33 74-2-7, that authorizes a person, desiring to commence construction, to proceed subject to certain constraints,
34 emissions limitations, and conditions.

35 **O. “Permittee”** means the person or duly authorized representative thereof to whom the authority-to-
36 construct permit has been issued pursuant to the provisions of this Part.

37 **P. “Portable Stationary Source”** means a source, which can be relocated to another operating site
38 with limited dismantling and reassembly, including for example, but not limited to, movable sand and gravel
39 processing operations and asphalt plants.

40 **Q. “Pre-Controlled Emission Rate”** means the hypothetical emission rate that the source might
41 have if operated at its maximum process capability and if there were no air pollution controls except those essential
42 to production of product or to normal operation of the source. This phrase is frequently referred to as uncontrolled
43 emission rate.

44 **R. “Regulated Air Contaminant”** means any airborne substance, the emission or ambient
45 concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the CAA.

46 **S. “Significantly Impact”** means to pollute such that ambient contaminant concentrations including
47 background, as indicated by modeling techniques authorized by the Department, exceed any of the significance
48 levels listed in Table 1.

49 **T. “Startup”** means to put the stationary source, as constructed or modified under a permit pursuant
50 to this Part, into operation complete with operable air pollution controls, whereby the process equipment or process
51 performs for the purpose intended. Such operation may be cyclic in response to on-off controls. Repetition of cycles
52 is not considered as startup for the purpose of this Part.

53 **U. “Shutdown”** means the cessation of operation of a stationary source wherein the air pollution
54 controls are deactivated and the process is not activated to perform the purpose for which it was intended. Brief
55 interruptions of operation that are normal for the kind of source that operates in cyclic rather than near steady state
56 mode are not considered as shutdown for the purpose of this Part.

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1 **V. “Stationary Source or Source”** means a point of origin of air contaminant emissions which is
2 configured as a permanently or temporarily immobile facility, building, or structure that houses, contains, or
3 otherwise supports the installation of operating equipment or processes.
4 [3/24/82. . .7/21/87, 2/26/93, 12/16/94, 12/1/95; 20.11.41.7 NMAC - Rn, 20 NMAC 11.41.I.7, 10/1/02]

5
6 **20.11.41.8 VARIANCES:** [Reserved]
7 [12/1/95; 20.11.41.8 NMAC - Rn, 20 NMAC 11.41.I.8, 10/1/02]

8
9 **20.11.41.9 SAVINGS CLAUSE:** Any amendment to 20.11.41 NMAC, which is filed, with the State
10 Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control
11 Board Regulation 20, or 20.11.41 NMAC. Prosecution for a violation under prior regulation wording shall be
12 governed and prosecuted under the statute, ordinance, Part or regulation section in effect at the time the violation
13 was committed.
14 [12/16/94. . .12/1/95; 20.11.41.9 NMAC - Rn, 20 NMAC 11.41.I.9, 10/1/02]

15
16 **20.11.41.10 SEVERABILITY:** If any section, paragraph, sentence, clause, or word of this Part or any federal
17 standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the
18 decision shall not affect the validity of remaining provisions of this Part.
19 [12/16/94. . .12/1/95; 20.11.41.10 NMAC - Rn, 20 NMAC 11.41.I.10, 10/1/02]

20
21 **20.11.41.11 DOCUMENTS:** Documents incorporated and cited in this Part may be viewed at the
22 Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.
23 [12/1/95; 20.11.41.11 NMAC - Rn, 20 NMAC 11.41.I.11 & A, 10/1/02]

24
25 **20.11.41.12 FEES FOR PERMIT APPLICATION REVIEW:**

26 **A.** At the time any person submits an application for a permit it shall be accompanied by a check in
27 the amount required by 20.11.2 NMAC, PERMIT FEES. No application shall be considered complete until such fee
28 has been tendered.

29 **B.** Checks shall be made payable to the City of Albuquerque if the source is located within the
30 municipal limits of Albuquerque. Otherwise the appropriate fees shall be made payable to the County of Bernalillo.
31 [7/21/87. . .12/1/95; 20.11.41.12 NMAC - Rn, 20 NMAC 11.41.I.12, & Repealed, 10/1/02; Rn, 20 NMAC
32 11.41.II.1, 10/1/02]

33
34 **20.11.41.13 CONTENTS OF APPLICATIONS:**

35 **A.** Any person seeking a permit under this Part shall do so by filing a written application with the
36 Department.

37 **B. All applications shall:**

38 (1) be made on forms furnished by the Department,
39 (2) state the applicant's name and address, together with the name and address of the operator of the
40 source if different than the owner,

41 (3) state the date of application,

42 (4) provide sufficient information to describe the quantities and nature of any regulated air
43 contaminants that the source will emit inclusive of normal operation, operation at maximum production or
44 processing capability rate of the source, as well as during malfunction, startup and shutdown as can be reasonably
45 anticipated. Copies of all calculations, computations, modeling or analyses used in the derivations shall accompany
46 such information,

47 (5) provide the information required by paragraph (4) above, that shall be sufficient to demonstrate,
48 under pertinent analytical techniques and parameters as the Department may require, what effects such emissions
49 from routine operations will have upon any New Mexico or federal ambient air quality standard, or an applicable
50 NSPS or NESHAP limitation or any Board regulation.

51 (6) provide ambient impact analysis and information as to the steps the applicant will take in the
52 event of malfunction, as well as addressing the nature of emissions during routine startup or shutdown of the source
53 and its air pollution control equipment,

54 (7) be accompanied by:

55 (a) a map, such as the 7.5 minute Topographic Quadrangle map published by the United States
56 Geological Survey or a map of equivalent or greater scale, detail and precision such as from the City of Albuquerque

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1 or County of Bernalillo Zone Atlas showing the exact location of the proposed construction, or modification or
2 installation of the source,

3 (b) a process flow sheet, including a material balance of each subpart of the facility which
4 would be involved in routine operations and from which contaminant emissions could occur,

5 (c) a full description, including all calculations and the basis for all control efficiencies
6 presented, of the equipment to be used for air pollution control, including a process flow sheet, or, if the Department
7 so requires, layout and assembly drawings, and

8 (d) a description of the equipment or methods proposed by the applicant to be used for
9 emission measurement if required by the Department.

10 (8) state the maximum and normal operating time schedules of the source after completion of
11 construction or modification,

12 (9) contain such other relevant information as the Department may reasonably require, ~~and~~

13 (10) be signed by the owner or an authorized representative, certifying all information as represented
14 in the application and attachments thereto, if any,

15 (11) Disclose the sources, types, locations, quantities, and rates of all direct emissions of greenhouse
16 gases, including a detailed description of the quantification and estimation methodologies. If available, direct
17 emissions data shall be provided. Applicable emissions quantification procedures and methods of estimation
18 provided by the department shall be used if available. If requested by the department, the applicant shall provide the
19 same information relating to indirect emissions of greenhouse gases, and

20 (12) Provide a detailed description of all measures, equipment, plans, etc. that will be installed, used or
21 implemented to minimize or reduce direct and indirect emissions of greenhouse gases.

22
23 **C. Protection of Confidential Information:**

24 (1) The following items, when furnished to or obtained by the Board or the Department concerning
25 sources, shall be protected by the Department as confidential if specifically marked by the applicant as confidential
26 at the time such items are submitted, and shall not be made a part of any public record unless the applicant expressly
27 agrees to its publication:

28 (a) records or information relating to processes or production techniques unique to the owner or
29 operator, and

30 (b) data relating to the owner or operator's profits and costs which have not previously been
31 released to the public.

32 (2) This section shall not be construed to prohibit the release of information concerning the nature
33 and amount of emissions from any source.

34 (3) The Department shall review all claims of confidentiality made pursuant to this section and shall
35 notify the applicant by certified mail of its decision in a timely manner with the reasons therefor. The burden of
36 proof for claims of confidentiality shall be upon the applicant.

37 (4) The Department's determination on claims made pursuant to this section shall be the final
38 administrative determination.

39 (5) The Department shall protect information claimed and subsequently found to be Confidential as
40 prescribed in a Security Procedures Manual approved by the Board. Said manual shall be made available for public
41 inspection and the Department's compliance therewith subject to audit at all times.

42 [3/24/82. . 7/21/87, 20.11.41.13 NMAC - Rn, 20 NMAC 11.41.II.2, 10/1/02]

43
44 **20.11.41.14 PUBLIC NOTICE AND PARTICIPATION:**

45 **A. The Department shall execute the following public information and notice activities to:**

46 (1) make available for public inspection a list of all pending applications for permits,

47 (2) prepare a summary of each application and make it available for public inspection as soon as the
48 application is deemed complete by the Department,

49 (3) within fifteen (15) days after the Department deems an application complete, publish a public
50 notice in a local newspaper of general circulation. The notice shall include the name and address of the applicant,
51 location of the source, a brief description of the proposed construction or modification, a summary of the estimated
52 emissions and shall identify the manner in which comments or evidence on the application may be submitted to the
53 Department,

54 (4) allow all interested persons at least forty five but no more than sixty days from the date an
55 application is deemed complete to submit written comments, evidence or to request a public hearing on the
56 application,

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1 (5) mail written notice of the action taken on the permit application to those persons who submitted
2 written comments or evidence,

3 (6) within five (5) days after the Department deems the application complete, notify the appropriate
4 State of New Mexico agency by certified mail, of the application and include the summary of the application,

5 (7) on any permit application for a source which will emit, or has the potential to emit greater than
6 100 tons of any regulated air contaminant including any fugitive emissions of said contaminant, the Department
7 shall notify the state Environmental Improvement Division by certified mail at least sixty days prior to
8 commencement. Such notice shall include a summary of the application.

9 **B. Public Hearings on Permits Involving Significant Public Interest:** The Department shall hold
10 a public hearing if the director determines that there is significant public interest. The time, date, and place of the
11 hearing shall be determined by the Department. The Department shall give notice of the hearing to the applicant and
12 the affected public. The director may appoint a hearing officer. A transcript of the hearing shall be made at the
13 request of either the Department or the applicant and at the expense of the person requesting the transcript be made.
14 At the hearing, all interested persons shall be given a reasonable opportunity to submit data, views or arguments
15 orally or in writing and to examine witnesses testifying at the hearing.
16 [3/24/82. . 7/21/87,6/5/91; 20.11.41.14 NMAC - Rn, 20 NMAC 11.41.II.3, 10/1/02]

17
18 **20.11.41.15 PERMIT DECISIONS AND APPEALS:**

19 **A.** The Department shall, within thirty (30) days after its receipt of an application for a permit, review
20 such application for completeness. If the application is judged complete, a certified letter to that effect shall be sent
21 to the applicant. If the application is judged incomplete or if a different type of permit application is required, a
22 certified letter shall be sent to the applicant stating what additional information or points of clarification are
23 necessary to judge the application complete or what type of application must be filed. If the application is judged
24 complete but no permit is required any fees that accompanied the application shall be returned by certified mail. If a
25 letter of explanation is desired by the applicant informing the applicant why no permit is necessary, the applicant
26 shall make arrangements with the Department and tender the appropriate fee for such letter as required by 20.11.2
27 NMAC.

28 **B.** The Department shall establish an administrative record for each complete permit application
29 consisting of the application, any other evidence submitted by the applicant, any evidence or written comments
30 submitted by interested persons, any other evidence considered by the Department, a statement of matters officially
31 noticed, and if a public hearing is held, the evidence submitted at the hearing.

32 **C.** The Department shall take formal action upon each application in a timely manner not to exceed
33 one hundred twenty (120) days or one hundred eighty (180) days if a hearing has been called from the date the
34 application was deemed complete yet shall not preclude the public comment provisions of Paragraph (4), of
35 Subsection A. of 20.11.41.14 NMAC. Such formal action shall be to either grant the permit, grant the permit subject
36 to conditions, or deny the permit. The Department's formal action shall be based upon information contained in the
37 Department's administrative record.

38 **D.** Applicants for permits shall be notified of the Department's action by certified mail. If the permit
39 is issued subject to conditions, or denied, the notification shall state the reasons therefor. Applicants desiring
40 expedited receipt of the notification at the offices of the Department in lieu of certified mail may have it picked up
41 by an authorized representative who shall acknowledge receipt of same in writing.

42 **E.** If the applicant is dissatisfied with the action taken by the Department a public hearing before the
43 board may be requested by writing to the director within thirty (30) days after the notice of the Department's action
44 has been received by the applicant. Unless a timely request for hearing is made, the decision of the Department shall
45 be final.

46 **F.** If a timely request for public hearing is made; the Board shall hold such hearing within thirty (30)
47 days of receipt of the request. The Department shall notify the applicant by certified mail of the date, time and place
48 of the hearing. In the hearing, the burden of proof shall be upon the applicant. The Board may designate a hearing
49 officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the Board shall sustain,
50 modify or reverse the action of the Department within thirty (30) days.
51 [3/24/82. . 7/21/87, 12/1/95, 20.11.41.15 NMAC - Rn, 20 NMAC 11.41.II.4, 10/1/02]

52
53 **20.11.41.16 BASIS FOR PERMIT DENIAL:**

54 **A. The Department shall deny any request for a permit if:**

55 (1) it appears that the construction or modification will not meet applicable regulations adopted
56 pursuant to the Air Quality Control Act,;

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(2) the source will emit any air contaminant in excess of a NSPS, a NESHAP or a regulation of the Board,

(3) the source will emit, in such quantity and duration as to cause imminent danger to public health, a hazardous air pollutant for which no NESHAP applies,

(4) it appears that either:

(a) the construction or modification will cause or contribute to air contaminant levels in excess of any NAAQS. However, the ambient air standards that are unique to the Board shall not form a basis for determining excessive air contaminant emissions relative to a proposed construction or modification of a stationary source,

(b) if the source will emit an air contaminant so as to significantly impact an area in which a state ambient air quality standard is not being met or so as to cause a state ambient air quality standard to be exceeded for that contaminant,

(c) denial of a permit as in Subparagraph (b), of Paragraph (4), of Subsection A, of 20.11.41.16 NMAC above, need not be made if the applicant provides an approved emissions trade pursuant to 20.11.44 NMAC as part of his application and such trade is sufficient to offset the proposed emissions otherwise causing significant impact upon an area which exceeds the New Mexico Ambient Air Quality Standard, or that would cause the Exceedence of a New Mexico Ambient Air Quality Standard for that contaminant,

(d) if it appears that issuance of a permit will not be consistent with achieving progress toward attainment of the state ambient air quality standard that is being exceeded, or

(5) any provision of the Air Quality Control Act will be violated; or

(6) it appears that the construction of the new or modified source will not be completed within a reasonable time.

[3/24/82. . 7/21/87, 12/1/95, 20.11.41.16 NMAC - Rn, 20 NMAC 11.41.II.5, 10/1/02]

20.11.41.17 ADDITIONAL LEGAL RESPONSIBILITIES ON APPLICANTS: The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, the CAA or any applicable regulations of the Board.

[3/24/82. . 7/21/87, 20.11.41.17 NMAC - Rn, 20 NMAC 11.41.II.6, 10/1/02]

20.11.41.18 PERMIT CONDITIONS:

A. The contents of the application submitted pursuant to Subsection B of 20.11.41.2 NMAC, or as the application may be amended prior to being deemed complete, shall form the basis for the terms and conditions contained in the permit.

B. The Department shall set specific conditions upon a permit, which may include any combination of the following provisions. If the permit is for a modification, the requirements of this section apply only to the facility or facilities involved in such modification.

(1) placement of individual emission limits, determined on a case-by-case basis, on the source for which the permit is issued. Such individual emission limits shall be as restrictive as the most stringent of the following:

(a) the extent necessary to meet the requirements of the Air Quality Control Act and the CAA, or

(b) the extent necessary to meet what may reasonably be anticipated from a federally proposed NSPS or under any federally required revision to the State Implementation Plan which has been proposed on or before the date of the application and is expected to be finally adopted,

(c) the emission rate finally specified in the permit application.

(2) a requirement that the permittee install and operate control technology on the source, determined on a case-by-case basis, sufficient to meet the requirements of the Air Quality Control Act and the CAA and regulations promulgated pursuant thereto;

(3) compliance with applicable federal NSPS and NESHAP regulations;

(4) imposition of reasonable restrictions and limitations other than those relating specifically to emission limits or emission rates;

(5) a schedule of construction;

(6) that the source be equipped for performance testing, continuous emissions monitoring, and measuring ambient air quality and weather conditions as follows:

(a) sampling ports of a size, number and location as the Department may require,

(b) safe access to each port,

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1 (c) instrumentation to monitor and record emission data including continuous emission
2 monitoring, if appropriate,

3 (d) instrumentation to detect or activate alarms for emissions of specified hazardous air
4 pollutants in order to protect public health,

5 (e) any other reasonable sampling, testing or ambient monitoring and meteorological facilities
6 and protocol.

7 (7) repetitive testing pursuant to 20.11.41.21 NMAC;

8 (8) to establish and maintain such records of the nature and amount of emissions and to make such
9 periodic reports to the Department regarding the nature and amounts of emissions and the performance of air
10 pollution control equipment as are necessary to carry out the purpose of the Air Quality Control Act;

11 (9) require that the direct and indirect emission of greenhouse gases be strictly limited to the sources,
12 types, locations, quantities and rates specified in the approved permit application, subject to further reductions,
13 limitations or requirements as may be imposed by the regulations of the board or other state and/or federal law;

14 (10) require that any alleged voluntary reduction of greenhouse gas emissions to be claimed as a credit
15 or offset be described, quantified and reported to the department within three (3) months of such reduction, or as
16 may be required by the law under which such credit or offset will be claimed;

17 (11) require that the permittee comply with all applicable regulations of the board and other state and/or
18 federal law relating to greenhouse gases, whether enacted and promulgated before or after the issuance of the permit,
19 including but not limited to such regulations and laws relating to greenhouse gas emissions reporting, quantification,
20 measurement, monitoring, verification, recordkeeping, and caps;

21 (12) contain an acknowledgment that the permittee's emissions of greenhouse gases may be subject to
22 further regulation, which may include substantial reduction, offset, quantification, reporting and other requirements
23 imposed by regulation of the board or other state and/or federal law, consistent with state, federal and international
24 efforts to mitigate and minimize the effects of global warming and climate change. In the event of a conflict
25 between a permit condition and a requirement imposed under other law, the more stringent requirement shall apply;
26 and

27 (13) impose conditions regarding the emission of greenhouse gases, including initial emission limits
28 and/or systematic reductions in emissions, that the Department deems necessary to prevent the source, either alone
29 or in combination with other sources, from becoming a climate nuisance. The Department shall impose such
30 additional permit conditions as it deems necessary to prevent the emission of greenhouse gases at nuisance levels.
31 Entities and facilities whose annual emissions are less than 10,000 metric tons of CO2e shall not be subject to this
32 provision, and;

33 ([9]14) other reasonable conditions as the Department may deem necessary.

34 C. Any term or condition imposed by the Department in a permit obtained pursuant to this Part shall
35 apply to the same extent as a regulation of the Board.

36 [3/24/82. . .7/21/87, 12/1/95, 20.11.41.18 NMAC - Rn, 20 NMAC 11.41.II.7, 10/1/02]

37
38 **20.11.41.19 PERMIT CANCELLATION:** The Department may cancel any permit if the construction or
39 modification has not commenced within one year from the date of issuance or if, during the construction or
40 modification, work is suspended for a total of one year. Such cancellation shall be subject to the following
41 procedures:

42 A. At least thirty (30) days prior to the cancellation of a permit the Department shall notify the
43 permittee by certified mail of the impending cancellation. Subsequently, the Department shall notify the permittee
44 by certified mail of the actual cancellation of the permit and the reasons therefor. Construction, modification and, if
45 required, interim operation shall cease upon the effective date of cancellation contained in the notice of cancellation.
46 A permittee who has received notice that a permit will or has been canceled may request a public hearing before the
47 board. The request must be made in writing to the board either prior to or within thirty (30) days after notice of the
48 actual cancellation by the Department has been received by the permittee. Unless a timely request for hearing is
49 made, the decision of the Department shall be final.

50 B. If a timely request for public hearing is made; the Board shall hold such hearing within thirty (30)
51 days after receipt of the request. The Department shall notify the permittee by certified mail of the date, time and
52 place of the hearing. In the hearing the burden of proof shall be upon the permittee. The Board may designate a
53 hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the Board shall
54 sustain, modify or reverse the action of the Department.

55 [3/24/82. . .7/21/87, 20.11.41.19 NMAC - Rn, 20 NMAC 11.41.II.8, 10/1/02]

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1 **20.11.41.20 PERMITTEE'S NOTIFICATION OBLIGATIONS TO THE DEPARTMENT:** The owner
2 or operator of a stationary source subject to this Part shall notify the Department in writing or otherwise provide the
3 Department with:

- 4 A. not less than thirty (30) days prior to initial startup of the source, the projected date,
- 5 B. not greater than fifteen (15) days after startup the date of actual initial startup of the source,
- 6 C. within fifteen (15) days after any change of operator,
- 7 D. every two years from the date of issuance of the permit, an updated emissions inventory for the
8 source together with descriptions of any reconfigurations of process technology and air pollution control equipment.
9 A letter indicating that no change has occurred, if such is the case, shall be sufficient to comply with this
10 requirement.

11 [3/24/82. . . 7/21/87, 20.11.41.20 NMAC - Rn, 20 NMAC 11.41.II.9, 10/1/02]

12
13 **20.11.41.21 PERFORMANCE TESTING FOLLOWING STARTUP:** Within sixty (60) days after
14 achieving the maximum production rate in which the newly constructed or modified stationary source will be
15 operated, but not later than one hundred eighty (180) days after initial startup of the newly constructed or modified
16 source the owner or operator of the source may be required to conduct a performance test in accordance with
17 methods and under operating conditions approved by the Department and to furnish the Department with a written
18 report of the results of the test. The permittee shall allow a representative of the Department to be present at the test.
19 The performance tests may have to be repeated until such time that compliance is demonstrated and testing is
20 performed in a technically satisfactory manner.

21 [3/24/82. . . 7/21/87, 20.11.41.21 NMAC - Rn, 20 NMAC 11.41.II.10, 10/1/02]

22
23 **20.11.41.22 EMERGENCY PERMITS:**

24 A. The Department may issue an emergency authority to construct permit when presented with a
25 situation threatening the public health, safety or welfare, which requires the rapid construction or modification of, or
26 installation of equipment in a facility subject to this Part if necessary to mitigate, prevent or remedy harm to the
27 public.

28 B. Department personnel shall verify that the source, operating in accordance with the permit to be
29 issued can and will meet all applicable standards, emission limitations and conditions before authorizing startup in
30 order to ensure that the public emergency is not worsened by excess emissions or improper air pollution control
31 equipment.

32 C. A situation caused by any negligent or unlawful action or operation of the facility by the facility
33 owner or operator, including but not limited to, failure to seek a permit shall not constitute an emergency for the
34 purposes of this section.

35 D. The requirements of Paragraphs (4) and (5), of Subsection A, of 20.11.41.14 NMAC; Subsection
36 B. of 20.11.41.14 NMAC; Subsection A of 20.11.41.15 NMAC; and Subsection C. of 20.11.41.15 NMAC; shall not
37 apply to emergency permits processed under this section.

38 [7/21/87. . . 12/1/95, 20.11.41.22 NMAC - Rn, 20 NMAC 11.41.II.11, 10/1/02]

39
40 **20.11.41.23 SYNTHETIC MINOR PERMITS:**

41 A. The opportunity to obtain an Authority-to-Construct permit with a federally enforceable emission
42 limitation will be made available to existing stationary sources that are considered to be major sources and would be
43 subject to the provisions of 20.11.42 NMAC, Operating Permits. This opportunity shall be restricted to major
44 sources whose construction preceded the requirement for an Authority-to-Construct permit.

45 B. Any major source that possesses an Authority-to-Construct permit but wishes to modify the permit
46 so as to lower the emission limits such that it is no longer considered to be a major source may do so in accordance
47 with the provisions contained in this section.

48 C. An existing major source wishing to limit its emissions through the Authority-to-Construct
49 permitting process of 20.11.41 NMAC shall be subject to all requirements of this Part including but not limited to:

- 50 (a) 20.11.41.12 NMAC, Fees for Permit Application Review.
- 51 (b) 20.11.41.14 NMAC, Public Notice and Participation.
- 52 (c) 20.11.41.16 NMAC, Basis for Permit Denial.
- 53 (d) 20.11.41.17 NMAC, Additional Legal Responsibilities on Applicants.
- 54 (e) 20.11.41.21 NMAC, Performance Testing.

55 D. Exemptions from fees for modifications contained in 20.11.2. NMAC, Permit Fees, shall not be
56 applicable to synthetic minor permits.

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E. For the purposes of 20.11.41.23 NMAC, the terms "emission limitation", "federally enforceable", and "major source" shall be defined in accordance with their definitions found in section 20.11.42.7 NMAC. [3/24/82. . .5/23/94, 12/1/95, 20.11.41.23 NMAC - Rn, 20 NMAC 11.41.II.12, 10/1/02]

20.11.41.24 NONATTAINMENT AREA REQUIREMENTS:

A. The emissions offset constraints of this section shall apply to those sources causing either of the following ambient effects:

(1) For State Non-Methane Hydrocarbons (NMHCs) Standard: Any new source or modification which will emit NMHCs such that the source's NMHC emissions would cause the NM Ambient Air Quality Standard of 0.19 ppm, 3-hour average, to be exceeded at any location; or

(2) For State Ambient Air Standards Other Than NMHCs: Any new source or modification which will emit a regulated air contaminant other than NMHCs such that the source's emissions would cause the significant ambient concentration of any contaminant listed in Table 1 to be exceeded at any location that does not meet the New Mexico Ambient Air Quality Standard for the contaminant; or

(3) For National Ambient Air Quality Standards: Any new source or modification, which is not a major stationary source or major modification as defined in 20.11.60 NMAC, which will emit a regulated air contaminant such that the source's emissions would cause the significant ambient concentration of any contaminant listed in Table 1 to be exceeded at any location which is designated as a Nonattainment Area as defined in 20.11.60 NMAC.

B. A source or modification subject to this section shall offset the ambient impact of its emissions by:

(1) In the case of exceeding the NM Ambient Air Standard for NMHCs, securing an approved emissions trade pursuant to 20.11.44 NMAC, Emissions Trading, and,

(2) if other than that of Paragraph (1), of Subsection B. of 20.11.41.24 NMAC, above, a source exceeding any of the significant ambient concentrations listed in Table 1 shall offset as follows:

(a) obtain emission offsets for the proposed emissions in an amount greater than one-to-one such that a net air quality benefit will occur; and

(b) ensure emission offsets are quantifiable, enforceable, and permanent by meeting the following sections of 20.11.60 NMAC:

(i) 20.11.41.16 NMAC, Emission Offset Baseline.

(ii) 20.11.41.17 NMAC, Emission Offsets.

(iii) 20.11.41.19 NMAC, Air Quality Benefit.

[2/26/93. . .12/1/95, 20.11.41.24 NMAC - Rn, 20 NMAC 11.41.II.13, 10/1/02]

20.11.41.25 COMPLIANCE CERTIFICATION: Notwithstanding any State Implementation Plan approved by the Administrator, for the purpose of submission of compliance certifications an owner or operator is not prohibited from using monitoring as required under 20.11.42 NMAC and incorporated into an operating permit in addition to any specified compliance methods.

[12/16/94, 20.11.41.25 NMAC - Rn, 20 NMAC 11.41.II.14, 10/1/02]

20.11.41.26 ENFORCEMENT: Notwithstanding any other provision in the New Mexico State Implementation Plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

A. Presumptively Credible Evidence: Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

(1) A Monitoring method approved for the source pursuant to 20.11.42 NMAC and incorporated into an operating permit; or

(2) Compliance methods specified in the applicable plan.

B. Presumptively Credible Testing, Monitoring, or Information Gathering Methods: The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

(1) Any federally enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61, 63 and 75; and

(2) Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method in Subsections A or B, of 20.11.41.26 NMAC, above.

20.11.41.27 SIGNIFICANT AMBIENT CONCENTRATIONS:

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Table 1.

Pollutant	Averaging Time					
	Annual	24-hr	8-hr	3-hr	1-hr	1/2-hr
TSP	1.0 µg/m ³	5.0 µg/m ³	--	--	--	--
PM ₁₀	1.0 µg/m ³	5.0 µg/m ³	--	--	--	--
SO ₂	1.0 µg/m ³	5.0 µg/m ³	--	25 µg/m ³	--	--
H ₂ S	--	--	--	--	1.0 µg/m ³	5.0 µg/m ³
CO	--	--	0.5 µg/m ³	--	2.0 µg/m ³	--
NO ₂	1.0 µg/m ³	5.0 µg/m ³	--	--	--	--
NMHC	--	--	--	5.0 µg/m ³	--	--
Lead (Pb)	0.03 µg/m ³ quarterly					

[6/5/91, 5/23/94, 12/16/94, 12/1/95; 20.11.41.26 NMAC - Rn, 20 NMAC 11.41.II.15, 10/1/02]

20.11.41.28 PERMIT REOPENING: A permit shall be reopened if the Department determines that the permittee's direct or indirect emissions of greenhouse gases, either alone or in combination with other sources, has or will constitute or contribute to a climate nuisance. The Department shall reopen the permit to impose such additional permit conditions as it deems necessary to systematically reduce the annual emission of greenhouse gases to below nuisance levels in the shortest time practicable. Entities and facilities whose annual emissions are less than 10,000 metric tons of CO₂e shall not be subject to this provision.

HISTORY OF 20.11.41 NMAC:

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

Resolution No. 1, Air Pollution Control Regulations Of The Albuquerque Bernalillo County Air Quality Control Board, 8/6/71;

Regulation No. 1, Air Pollution Control Regulations, 6/6/73;

Regulation No. 1, Air Pollution Control Regulations, 7/9/73;

Regulation No. 1, Air Pollution Control Regulations, 3/21/77;

Regulation No. 20, Permits. 3/24/82;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 3/24/82;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 7/21/87;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 6/5/91;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 2/26/93;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 5/23/94,

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 12/16/94.

History of Repealed Material: [Reserved]

Other History:

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, filed 12/16/94 91 was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.41, Authority-To-Construct Permits, filed 10/27/95.

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1 20 NMAC 11.41, Authority-To-Construct Permits, filed 10/27/95 was **renumbered, reformatted, amended and**
2 **replaced** by 20.11.41 NMAC, Authority-To-Construct Permits, effective 10/1/02.
3

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
 2 **CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
 3 **PART 42 OPERATING PERMITS**

4
 5 **20.11.42.1 ISSUING AGENCY:** Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box
 6 1293, Albuquerque, New Mexico 87103. Telephone:(505) 768-2600.
 7 [3/1/94. . .12/1/95; 20.11.42.1 NMAC - Rn, 20 NMAC 11.42.I.1, 10/1/02]

8
 9 **20.11.42.2 SCOPE:**

10 **A. Part 42 Sources:** Operating permits must be obtained from the Department for the following
 11 sources:

- 12 (1) any major source,
- 13 (2) any source, including an area source, subject to a standard or other requirement promulgated
 14 under Section 111 - Standards of Performance for New Stationary Sources, or Section 112 - Hazardous Air
 15 Pollutants, of the Federal Act, but not including any source which:
- 16 (a) is exempted under Subparagraph (b), of Paragraph (1), of Subsection C of 20.11.42 NMAC,
 17 or
- 18 (b) would be required to obtain a permit solely because it is subject to regulations or
 19 requirements under Section 112(r) of the Federal Act.
- 20 (3) any acid rain source, and
- 21 (4) any source in a source category so designated by the Administrator, in whole or in part, by
 22 regulation, after notice and comment.

23 **B. Requirement for a Permit:**

- 24 (1) Part 42 source may operate after the time that it is required to submit a timely and complete
 25 application under 20.11.42 NMAC only if:
- 26 (a) the source is in compliance with an operating permit issued by the Department or EPA, or
- 27 (b) a timely permit (including permit renewal) application has been submitted consistent with
 28 Subsection A of 20.11.42.12 NMAC. The ability to operate under these circumstances shall cease if the applicant
 29 fails to submit by the deadline specified in writing by the Department any additional information identified as being
 30 needed to process the application.
- 31 (2) Revocation or termination of a permit by the Department terminates the permittee's right to
 32 operate.
- 33 (3) The submittal of a complete operating permit application shall not protect any source from any
 34 applicable requirement, including any requirement that the source have a pre-construction permit under Title I of the
 35 Federal Act or Board regulations.

36 **C. Source Category Exemptions and Deferrals:**

- 37 (1) The following source categories are exempted from the obligation to obtain an operating permit:
- 38 (a) all sources and source categories that would be required to obtain a permit solely because
 39 they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters,
- 40 (b) all sources and source categories that would be required to obtain a permit solely because
 41 they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for
 42 Asbestos, Section 61.145, Standard for Demolition and Renovation,
- 43 (c) except as required under Section 20.11.42.14 NMAC, any source that would be required to
 44 obtain a permit solely because of emissions of radionuclides, and
- 45 (d) Any source in a source category exempted by the Administrator, by regulation, after notice
 46 and comment.
- 47 (2) Non-major sources, including those subject to Sections 111 or 112 of the Federal Act are exempt
 48 from the obligation to obtain a 20.11.42 NMAC permit until the Administrator completes a rulemaking requiring
 49 such sources to obtain operating permits.
- 50 (3) Any source exempted from the requirement to obtain an operating permit may opt to apply for a
 51 permit under 20.11.42 NMAC.

52 **D. Existing Major Sources, Which Are Not Required to Have a Permit Under 20.11.41 NMAC:**

- 53 (1) Existing major sources which have not been required to have a permit under 20.11.41 NMAC,
 54 and wish to avoid designation as a major source under 20.11.42 NMAC, may apply for a permit under 20.11.41
 55 NMAC to obtain federally enforceable conditions which restrict the potential to emit to non-major emission rates.

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1 Such conditions may include emissions limitations, process restrictions and/or limitations, restrictions on annual
2 hours of operation, or other conditions which would reduce the facility's potential to emit.

3 (2) Any such source which has not been issued a 20.11.41 NMAC permit as described in Paragraph
4 (1), of Subsection D of 20.11.42.2 NMAC above prior to the application date required under Subparagraph (b), of
5 Paragraph (2), of Subsection A of 20.11.42.12 NMAC shall be subject to the requirements of 20.11.42 NMAC.

6 **E. Indian Tribal Jurisdiction:** The requirements of 20.11.42.NMAC do not apply to sources within
7 Indian Tribal jurisdiction. For the operation of sources in that jurisdiction, the applicant shall make such
8 applications to the Tribal Authority or to the Administrator, as appropriate.
9 [3/1/94. . .12/1/95; 20.11.42.2 NMAC - Rn, 20 NMAC 11.42.I.2, 10/1/02]

10
11 **20.11.42.3 STATUTORY AUTHORITY:** 20.11.42 NMAC is adopted pursuant to the authority provided in
12 the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control
13 Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance,
14 Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.
15 [3/1/94. . .12/1/95; 20.11.42.3 NMAC - Rn, 20 NMAC 11.42.I.3, 10/1/02]

16
17 **20.11.42.4 DURATION:** Permanent.
18 [12/1/95; 20.11.42.4 NMAC - Rn, 20 NMAC 11.42.I.4, 10/1/02]

19
20 **20.11.42.5 EFFECTIVE DATE:** The effective date of 20.11.42 NMAC shall be the effective date of
21 approval, by the Administrator of the Albuquerque/Bernalillo County operating permit program, including approval
22 of any partial or interim program.
23 [3/1/94; 20.11.42.5 NMAC - Rn, 20 NMAC 11.42.I.5, 10/1/02]

24
25 **20.11.42.6 OBJECTIVE:** The objective of this Part is to assure that major air pollution sources within
26 Bernalillo County obtain an operating permit setting forth minimum requirements and conditions of operation
27 pursuant to Title V of the Clean Air Act Amendments of 1990 (42 U.S.C. 7401, et seq.).
28 [3/1/94. . .12/1/95; 20.11.42.6 NMAC - Rn, 20 NMAC 11.42.I.6, 10/1/02]

29
30 **20.11.42.7 DEFINITIONS:** In addition to the definitions in 20.11.42.7 NMAC, the definitions in 20.11.1
31 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.42 NMAC shall
32 govern.

33 **A. "Acid Rain Source"** has the meaning given to "affected source" in the regulations promulgated
34 under Title IV of the Federal Act, and includes all sources subject to Title IV.

35 **B. "Affected Programs"** means the state of New Mexico and Indian Tribes and Pueblos that are
36 within 50 miles of the source.

37 **C. "Air Pollutant"** means an air pollution agent or combination of such agents, including any
38 physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct
39 material) substance or matter, which is emitted into or otherwise, enters the ambient air. Such term includes any
40 precursors to the formation of any air pollutant; to the extent the Administrator has identified such precursor or
41 precursors for the purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N₂),
42 carbon dioxide (CO₂), oxygen (O₂), methane and ethane.

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

48 **E. "Applicable Requirement"** means all of the following, as they apply to emissions units at a
49 20.11.42 NMAC source (including requirements that have been promulgated or approved by the Board or EPA
50 through rulemaking at the time of permit issuance but have future-effective compliance dates):

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

54 (2) any term or condition of any pre-construction permit issued pursuant to regulations approved or
55 promulgated through rulemaking under Title I, including parts C or D, of the Federal Act, unless that term or
56 condition is determined by the Department to be no longer pertinent,

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- 1 (3) any standard or other requirement under Section 111 of the Federal Act,
- 2 (4) any standard or other requirement under Section 112 of the Federal Act,
- 3 (5) any standard or other requirement of the acid rain program under Title IV of the Federal Act or
- 4 the regulations promulgated thereunder,
- 5 (6) any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Federal Act,
- 6 (7) any standard or other requirement governing solid waste incineration under Section 129 of the
- 7 Federal Act,
- 8 (8) any standard or other requirement for consumer and commercial products under Section 183(e) of
- 9 the Federal Act,
- 10 (9) any standard or other requirement for tank vessels under Section 183(f) of the Federal Act,
- 11 (10) any standard or other requirement of the regulations promulgated to protect stratospheric ozone
- 12 under Title VI of the Federal Act, unless the Administrator has determined that such requirements need not be
- 13 contained in a Title V permit,
- 14 (11) any National Ambient Air Quality Standard
- 15 (12) any increment or visibility requirement under Part C of Title I of the Federal Act applicable to
- 16 temporary sources permitted pursuant to Section 504(e) of the Federal Act, and
- 17 (13) any regulation adopted by the Board in accordance with the Joint Air Quality Control Board
- 18 Ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-5.B NMSA 1978.

19 **F. "Department"** means the Albuquerque Environmental Health Department or its successor agency

20 or authority, as represented by the Department Director or his or her designee.

21 **G. "Draft Permit"** means a version of a permit, which the department offers for public participation

22 or affected program review.

23 **H. "Emission Limitation"** means a requirement established by EPA, the Board, or the Department,

24 that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a

25 continuous basis, including any requirements relating to the operation or maintenance of a source to assure

26 continuous reduction.

27 **I. "Emissions Allowable Under the Permit"** means:

28 (1) any department or federally enforceable permit term or condition that establishes an emission

29 limit (including a work practice standard) requested by the applicant and approved by the department or determined

30 at issuance or renewal to be an applicable requirement; or

31 (2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable

32 requirement to which the source would otherwise be subject.

33 **J. "Emissions Unit"** means any part or activity of a stationary source that emits or has the potential

34 to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the Federal Act. This

35 term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Federal Act.

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

37 **L. Federally Enforceable:** means all limitations and conditions which are enforceable by the

38 Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the

39 New Mexico State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or

40 under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

41 **M. "Final Permit"** means the version of an operating permit issued by the department that has met

42 all review requirements of Section 20.11.42.13 NMAC.

43 **N. "Fugitive Emissions"** are those emissions, which could not reasonably pass through a stack,

44 chimney, vent, or other functionally equivalent opening.

45 **O. "General Permit"** means an operating permit that meets the requirements of Subsection D of

46 20.11.42.12 NMAC.

47 **P. "Hazardous Air Pollutant"** means an air contaminant that has been classified as a hazardous air

48 pollutant pursuant to the Federal Act.

49 **Q. "Insignificant Activities"** means those activities listed by the Department and approved by the

50 Administrator as insignificant on the basis of size, emissions or production rate.

51 **R. "Major Source"** means any stationary source (or any group of stationary sources that are located

52 on one or more contiguous or adjacent properties, and are under common control of the same person(s) in which all

53 of the pollutant emitting activities at such source belong to the same Major Group (i.e., all have the same two-digit

54 code), as described in the Standard Industrial Classification Manual, 1987, and that is described in paragraphs (1),

55 (2), or (3) below.

56 (1) A major source under Section 112 of the Federal Act, which is defined as:

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1 (a) For pollutants other than radionuclides, any stationary source or group of stationary sources
2 located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate,
3 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the
4 Federal Act, 25 or more tons per year of any combination of such hazardous air pollutants (including any major
5 source of fugitive emissions of any such pollutant, as determined by rule by the Administrator), or such lesser
6 quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions
7 from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from
8 any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units,
9 whether or not such units are in a contiguous area or under common control, to determine whether such units or
10 stations are major sources.

11 (b) For radionuclides, "major source" shall have the meaning specified by the Administrator by
12 rule.

13 (2) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 or
14 more tons per year of any air pollutant (including any major source of fugitive emissions of any such pollutant, as
15 determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in
16 determining whether it is a major stationary source for the purposes of this paragraph, unless the source belongs to
17 one of the following categories of stationary sources:

- 18 (a) Coal cleaning plants (with thermal dryers);
- 19 (b) Kraft pulp mills;
- 20 (c) Portland cement plants;
- 21 (d) Primary zinc smelters;
- 22 (e) Iron and steel mills;
- 23 (f) Primary aluminum ore reduction plants;
- 24 (g) Primary copper smelters;
- 25 (h) Hydrofluoric, sulfuric, or nitric acid plants;
- 26 (i) Petroleum refineries;
- 27 (j) Lime plants;
- 28 (k) Phosphate rock processing plants;
- 29 (l) Coke oven batteries;
- 30 (m) Sulfur recovery plants;
- 31 (n) Carbon black plants (furnace process);
- 32 (o) Primary lead smelters;
- 33 (p) Fuel conversion plant;
- 34 (q) Sintering plants;
- 35 (r) Secondary metal production plants;
- 36 (s) Chemical process plants;
- 37 (t) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal
38 units per hour heat input;
- 39 (u) Petroleum storage and transfer units with a total storage capacity exceeding 300,000
40 barrels;
- 41 (v) Taconite ore processing plants;
- 42 (w) Glass fiber processing plants;
- 43 (x) Charcoal production plants;
- 44 (y) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per
45 hour heat input;
- 46 (z) All other stationary source categories regulated by a standard promulgated under Section
47 111 or 112 of the Federal Act.

48 (3) A major stationary source as defined in Part D of Title I of the Federal Act:

49 (a) For ozone non-attainment areas, sources with the potential to emit 100 tons or more per
50 year of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons or
51 more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or
52 more per year in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10
53 tons per year of nitrogen oxides shall not apply to any source for which the Administrator has made a finding, under
54 Section 182(f)(1) or (2) of the Federal Act, that requirements under Section 182(f) of the Act do not apply;

55 (b) For ozone transport regions established pursuant to Section 184 of the Federal Act, sources
56 with the potential to emit 50 tons or more per year of volatile organic compounds;

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1 (c) For carbon monoxide non-attainment areas:
2 (i) that are classified as "serious," and
3 (ii) in which stationary sources contribute significantly to carbon monoxide levels as
4 determined under rules issued by the Administrator, sources with the potential to emit 50 tons or more per year of
5 carbon monoxide; and

6 (d) For particulate matter (PM₁₀) non-attainment areas classified as "serious," sources with the
7 potential to emit 70 tons or more per year of PM₁₀.

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

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

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

12 **V. "Part 42 Source"** means any source subject to the permitting requirements of this regulation, as
13 provided in Section 20.11.42.2 NMAC.

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

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

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

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

27 **AA. "Proposed Permit"** means the version of a permit that the Department proposes to issue and
28 forwards to the Administrator for review in compliance with Subsection C of 20.11.42.13 NMAC.

29 **BB. "Regulated Air Pollutant"** means the following:

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

31 (2) any pollutant for which a National Ambient Air Quality Standard has been promulgated,

32 (3) any pollutant that is subject to any standard promulgated under Section 111 of the Federal Act,

33 (4) Any Class I or II substance subject to any standard promulgated under or established by Title VI
34 of the Federal Act, or

35 (5) any pollutant subject to a standard promulgated under Section 112 or any other requirements
36 established under Section 112 of the Federal Act, including:

37 (a) any pollutant subject to requirements under Section 112(j) of the Federal Act. If the
38 Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Federal Act,
39 any pollutant for which a subject source would be a major source shall be considered to be regulated on the date 18
40 months after the applicable date established pursuant to Section 112(e) of the Federal Act, and

41 (b) any pollutant for which the requirements of Section 112(g)(2) of the Federal Act have been
42 met, but only with respect to the individual source subject to a Section 112(g)(2) requirement.

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

44 **DD. "Responsible Official"** means one of the following:

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

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

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

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

55 (3) For a municipality, state, federal or other public agency: either a principal executive officer or
56 ranking elected official. For the purposes of this regulation, a principal executive officer of a federal agency

1 includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of
2 the agency (e.g., a Regional Administrator of EPA).

3 (4) For an acid rain source: the designated representative (as defined in Section 402(26) of the
4 Federal Act) in so far as actions, standards, requirements, or prohibitions under Title IV of the Federal Act or the
5 regulations promulgated thereunder are concerned, and for any other purposes under 40 CFR, Part 70.

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

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

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

14 **HH. "Stationary Source or Source":** means any building, structure, facility, or installation that emits
15 or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Federal Act.

16 **II. "Subsidiary"** means a business concern which is owned or controlled by, or is a partner of, the
17 applicant or permittee.

18 **JJ. "Title I Modification"** means any modification under Sections 111 or 112 of the Federal Act and
19 any physical change or change in method of operations that is subject to the pre-construction regulations
20 promulgated under Parts C and D of the Federal Act.

21 [3/1/94. . .12/1/95; 20.11.42.7 NMAC - Rn, 20 NMAC 11.42.I.7, 10/1/02; A, 2/1/03]

22
23 **20.11.42.8 VARIANCES:** In accordance with the Joint Air Quality Control Board Ordinances pursuant to
24 the New Mexico Air Quality Control Act Section 74-2-8 NMSA 1978, applicants and permittee's may seek a
25 variance from the non-federally enforceable provisions of this Part.

26 [3/1/94. . .12/1/95; 20.11.42.8 NMAC - Rn, 20 NMAC 11.42.I.8, 10/1/02]

27
28 **20.11.42.9 SAVINGS CLAUSE:** Any amendment to 20.11.42 NMAC, which is filed, with the State
29 Records Center shall not affect actions pending for violation of a City or County ordinance, or Board Regulation 41,
30 or 20.11.42 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted
31 under the statute, ordinance, Part or regulation section in effect at the time the violation was committed.

32 [12/16/94. . .12/1/95; 20.11.42.9 NMAC - Rn, 20 NMAC 11.42.I.9, 10/1/02]

33
34 **20.11.42.10 SEVERABILITY:** If any section, paragraph, sentence, clause, or word of this Part is for any
35 reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of
36 remaining provisions of this Part.

37 [12/16/94. . .12/1/95; 20.11.42.10 NMAC - Rn, 20 NMAC 11.42.I.10, 10/1/02]

38
39 **20.11.42.11 DOCUMENTS:** Documents incorporated and cited in this Part may be viewed at the
40 Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

41 [12/1/95; 20.11.42.11 NMAC - Rn, 20 NMAC 11.42.I.11 & A, 10/1/02]

42
43 **20.11.42.12 PERMIT REQUIREMENTS:**

44 **A. Permit Applications:**

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

47 (2) **Timely Application:**

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

49 (i) for first time applications, one that is submitted within twelve (12) months after the
50 source commences operation as a 20.11.42 NMAC source, or as established in the transition schedule outlined in
51 Subparagraph (b), of Paragraph (2), of Subsection A of 20.11.42.12 NMAC below,

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

54 (iii) for the acid rain portion of permit applications for initial Phase II acid rain sources
55 under Title IV of the Federal Act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

1 **(b) Transition schedule:** A timely application for a 20.11.42 NMAC source which is in
2 operation on or before the effective date of 20.11.42 NMAC is one that is submitted:

3 (i) within six (6) months after the effective date for storage of gasoline in stationary
4 containers having greater than 40,000 gallons capacity and loading of gasoline from loading racks having a 30-day
5 throughput greater than 600,000 gallons,

6 (ii) within twelve (12) months after the effective date for other sources.

7 **(3) Completeness of Application:**

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

11 (b) If, while processing an application, regardless of whether it has been determined or deemed
12 to be complete, the Department determines that additional information is necessary to evaluate or take final action
13 on that application, it may request such information in writing and set a reasonable deadline for a response.

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

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

23 **(4) Content of Application:** Any person seeking a permit under 20.11.42 NMAC shall do so by
24 filing a written application with the department. The applicant shall submit three (3) copies of the permit
25 application, or more, as requested by the Department. An applicant may not omit information needed to determine
26 the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under 20.11.2
27 NMAC, Permit Fees. Fugitive emissions shall be included in the permit application in the same manner as stack
28 emissions, regardless of whether the source category in question is included in the list of sources contained in the
29 definition of major source. All applications shall:

30 (a) be made on forms furnished by the Department, which for the acid rain portions of permit
31 applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations
32 promulgated under Title IV of the Federal Act,

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

38 (c) state the date of the application,

39 (d) include a description of the source's processes and products (by Standard Industrial
40 Classification Code) including any associated with alternative scenarios identified by the applicant, and a map, such
41 as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey or the most
42 detailed map available showing the exact location of the source. The location shall be identified by latitude and
43 longitude or by UTM coordinates,

44 (e) for all emissions of all air pollutants for which the source is major and all emissions of
45 regulated air pollutants, provide all emissions information, calculations and computations for the source and for each
46 emissions unit, except for insignificant activities (as defined in Subsection Q of 20.11.42.7 NMAC). This shall
47 include:

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

50 (ii) identification and description of all emission points in sufficient detail to establish the
51 basis for fees and applicability of requirements of the state and Federal Acts,

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

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

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

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

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

7 (viii) other relevant information as the Department may reasonably require or which are
8 required by any applicable requirements (including information related to stack height limitations developed
9 pursuant to Section 123 of the Federal Act), and

10 (ix) for each alternative operating scenario identified by the applicant, all of the
11 information required in Items (i) through (viii) above, as well as additional information determined to be necessary
12 by the Department to define such alternative operating scenarios,[-]

13 (f) Disclose the sources, types, locations, quantities, and rates of all direct emissions of
14 greenhouse gases, including a detailed description of the quantification and estimation methodologies. If available,
15 direct emissions data shall be provided. Applicable emissions quantification procedures and methods of estimation
16 provided by the department shall be used if available. If requested by the department, the applicant shall provide the
17 same information relating to indirect emissions of greenhouse gases. Reporting of greenhouse gases emissions
18 pursuant to Part 20.11.47 or Part 20.11.48 shall satisfy this requirement.

19 (g) Provide a detailed description of all measures, equipment, plans, etc. that will be
20 installed, used or implemented to minimize or reduce direct and indirect emissions of greenhouse gases.

21 (f|h) provide a list of insignificant activities (as defined in Subsection Q of 20.11.42.7 NMAC)
22 at the source, their emissions, to the extent required by the Department, and any information necessary to determine
23 applicable requirements,

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

26 (i|j) sufficient information related to the emissions of regulated air pollutants to verify
27 the requirements that are applicable to the source, and

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

30 (h|j) provide an explanation of any proposed exemptions from otherwise applicable
31 requirements,

32 (i|k) provide other specific information that may be necessary to implement and enforce other
33 requirements of the state or federal Acts or to determine the applicability of such requirements, including
34 information necessary to collect any fees owed under 20.11.2 NMAC, Permit Fees;

35 (j|l) for applications which:

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

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

47 (k|m) provide certification of compliance, including:

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

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

52 (iii) a statement that the source will continue to be in compliance with applicable
53 requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by
54 the applicable requirement, meet additional applicable requirements that become effective during the permit term,

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

4 (v) a statement indicating the source's compliance status with any enhanced monitoring
5 and compliance certification requirements of the Federal Act.

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

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

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

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

18 (iv) a schedule for submission of certified progress reports no less frequently than every
19 six (6) months, and

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

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

29 **B. Confidential Information Protection:**

30 (1) All confidentiality claims made regarding material submitted to the department under this Part
31 shall be reviewed in accordance with the provisions of the Joint Air Quality Control Board Ordinances pursuant to
32 the New Mexico Air Quality Control Act Section 74-2-11 NMSA 1978 and the New Mexico Inspection of Public
33 Records Act, Section 14-2-1, et seq. NMSA 1978.

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

37 (3) An operating permit is a public record, and not entitled to protection under Section 114(c) of the
38 Federal Act.

39 **C. Permit Content:**

40 (1) **Permit Conditions:**

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

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

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

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

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

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

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

4 (vii) require that the emission of greenhouse gases be strictly limited to the sources, types,
5 locations, quantities and rates specified in the approved permit application, subject to further reductions, limitations
6 or requirements as may be imposed pursuant to the regulations of the board or other state and/or federal law.

7 (viii) require that any alleged voluntary reduction of greenhouse gas emissions to be
8 claimed as a credit or offset be described, quantified and reported to the department within three (3) months of such
9 reduction, or as may be required by the law under which the credit or offset will be claimed.

10 (ix) require that the permittee comply with all applicable regulations of the board and
11 other state and/or federal law relating to greenhouse gases, whether enacted and promulgated before or after the
12 issuance of the permit, including but not limited to such regulations and laws relating to greenhouse gas emissions
13 reporting, quantification, measurement, monitoring, verification, recordkeeping, and caps,

14 (x) contain an acknowledgment that the permittee's emissions of greenhouse gases may
15 be subject to further regulation, which may include substantial reduction, offset, quantification, reporting and other
16 requirements imposed by regulation of the board or other state and/or federal law, consistent with state, federal and
17 international efforts to mitigate and minimize the effects of global warming and climate change. In the event of a
18 conflict between a permit condition and a requirement imposed by other law, the more stringent requirement shall
19 apply, and

20 (xi) impose conditions regarding the emission of greenhouse gases, including initial
21 emission limits and/or systematic reductions in emissions, that the Department deems necessary to prevent the
22 source, either alone or in combination with other sources, from becoming a climate nuisance. The Department shall
23 impose such additional permit conditions as it deems necessary to prevent the emission of greenhouse gases at
24 nuisance levels. Entities and facilities whose annual emissions are less than 10,000 metric tons of CO₂e shall not be
25 subject to this provision.

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

27 (i) the permittee shall comply with all terms and conditions of the permit. Any permit
28 noncompliance is grounds for enforcement action. In addition, noncompliance with federally enforceable permit
29 conditions constitutes a violation of the Federal Act,

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

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

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

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

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

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

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

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

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

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

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1 (f) The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any
2 person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the
3 Federal Act, federal regulations thereunder, any applicable regulations of the Board, and any other applicable law or
4 regulation.

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

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

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

13 (i) state that, where an applicable requirement of the Federal Act is more stringent than
14 an applicable requirement of regulations promulgated under Title IV of the Federal Act, both provisions shall be
15 incorporated into the permit and shall be enforceable by the Administrator,

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

24 (2) **Permit Duration:** The Department shall issue operating permits for a fixed term not to exceed
25 five (5) years.

26 (3) **Monitoring:**

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

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

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

38 (4) **Record keeping:**

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

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

42 (ii) the date(s) analyses were performed,

43 (iii) the company or entity that performed the analyses,

44 (iv) the analytical techniques or methods used,

45 (v) the results of such analyses, and

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

47 (b) Records of all monitoring data and support information shall be retained for a period of at
48 least five (5) years from the date of the monitoring sample, measurement, report, or application. Supporting
49 information includes all calibration and maintenance records and all original strip-chart recordings for continuous
50 monitoring instrumentation, and copies of all reports required by the permit.

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

53 (a) submittal of reports of any required monitoring at least every six (6) months. The reports
54 shall be due to the department within forty-five (45) days of the end of the permittee's reporting period. All
55 instances of deviations from permit requirements, including emergencies, must be clearly identified in such reports.

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1 All required reports must be certified by a responsible official consistent with Paragraph (5), of Subsection A of
2 20.11.42.12,

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

8 (c) submittal of compliance certification reports at least every twelve (12) months (or more
9 frequently if so specified by an applicable requirement) certifying the source's compliance status with all permit
10 terms and conditions and all applicable requirements relevant to the source, including those related to emission
11 limitations or work practices. The reports shall be due to the Department within thirty (30) days of the end of the
12 permittee's reporting period. Such compliance certifications shall be submitted to the Administrator as well as to the
13 Department and shall include:

14 (i) the identification of each term or condition of the permit that is the basis of the
15 certification,

16 (ii) the compliance status of the source,

17 (iii) whether compliance was continuous or intermittent,

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

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

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

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

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

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

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

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

34 (iv) sample or monitor any substances or parameters for the purpose of assuring
35 compliance with the permit or applicable requirements or as otherwise authorized by the Federal Act.

36 (b) Require that sources required under Subparagraph (k), of Paragraph (4), of Subsection A of
37 20.11.42.12 NMAC to have a schedule of compliance submit progress reports to the Department at least
38 semiannually, or more frequently if specified in the applicable requirement or by the Department. Such progress
39 reports shall be consistent with the schedule of compliance and requirements of Subparagraph (k), of Paragraph (4),
40 of Subsection A of 20.11.42.12 NMAC, and shall contain:

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

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

45 (c) Include such other provisions as the Department may require.

46 (7) **Operational Flexibility:**

47 (a) Section 502(b)(10) Changes:

48 (i) The permittee may make Section 502(b)(10) changes, as defined in Section
49 20.11.42.7 NMAC, without applying for a permit modification, if those changes are not Title I modifications and the
50 changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of
51 emissions or in terms of total emissions),

52 (ii) For each such change, the permittee shall provide written notification to the
53 Department and the Administrator at least seven (7) days in advance of the proposed changes. Such notification
54 shall include a brief description of the change within the permitted facility, the date on which the change will occur,
55 any change in emissions, and any permit term or condition that is no longer applicable as a result of the change,

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1 (iii) The permittee and Department shall attach each such notice to their copy of the
2 relevant permit,

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

6 (b) Emissions trading within a facility:

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

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

19 (iii) For each such change, the permittee shall provide written notification to the
20 Department and the Administrator at least seven (7) days in advance of the proposed changes. Such notification
21 shall state when the change will occur and shall describe the changes in emissions that will result and how these
22 increases and decreases in emissions will comply with the terms and conditions of the permit,

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

25 **(8) Off-Permit Changes:**

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

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

30 (ii) such changes are not subject to any requirements under Title IV of the Federal Act
31 and are not Title I modifications,

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

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

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

41 **(9) Permit Shield:**

42 (a) Except as provided in 20.11.42 NMAC, the Department shall expressly include in a
43 20.11.42 NMAC permit a provision stating that compliance with the conditions of the permit shall be deemed
44 compliance with any applicable requirements as of the date of permit issuance, provided that:

45 (i) such applicable requirements are included and are specifically identified in the permit,
46 or

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

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

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

53 (i) the provisions of Section 303 of the Federal Act - Emergency Powers, including the
54 authority of the Administrator under that section, or the provisions of the Joint Air Quality Control Board
55 Ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-10 NMSA 1978,

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- 1 (ii) the liability of an owner or operator of a source for any violation of applicable
2 requirements prior to or at the time of permit issuance,
3 (iii) the applicable requirements of the acid rain program, consistent with Section 408(a)
4 of the Federal Act,
5 (iv) the ability of EPA to obtain information from a source pursuant to Section 114 of the
6 Federal Act, or the department to obtain information in accordance with the Joint Air Quality Control Board
7 Ordinances pursuant to the New Mexico Air Quality Control Act 74-2-13 NMSA 1978.
8 (d) The permit shield shall remain in effect if the permit terms and conditions are extended past
9 the expiration date of the permit pursuant to Paragraph (4), of Subsection A of 20.11.42.13 NMAC.
10 (e) The permit shield may extend to terms and conditions that allow emission increases and
11 decreases as part of emissions trading within a facility pursuant to Subparagraph (b), of Paragraph (7), of Subsection
12 C of 20.11.42.12 NMAC, and to all terms and conditions under each operating scenario included pursuant to
13 Subparagraph (e), of Paragraph (1), of Subsection C of 20.11.42.12 NMAC.
14 (f) The permit shield shall not extend to administrative amendments Paragraph (1), of
15 Subsection E of 20.11.42.13 NMAC, to minor permit modifications under Paragraph (2), of Subsection E of
16 20.11.42.12 NMAC, to section 502(b)(10) changes under Subparagraph (a), of Paragraph (7) of Subsection C of
17 20.11.42.12 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part
18 under Subsection F of 20.11.42.13 NMAC.

19 **D. General Permits:**

20 **(1) Issuance of General Permits:**

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

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

27 **(2) Authorization to Operate Under a General Permit:**

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

30 (i) apply to the Department for coverage under the terms of the general permit,

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

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

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

40 (d) The Department may grant a request for authorization to operate under a general permit
41 without repeating the public participation procedures required under Subsection B of 20.11.42.13 NMAC. Such an
42 authorization shall not be a permitting action for purposes of administrative review under the Joint Air Quality
43 Control Board Ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-7.H NMSA 1978.

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

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

48 **E. Emergency Provision:**

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

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

- 4 (a) an emergency occurred and that the permittee can identify the cause(s) of the emergency,
- 5 (b) the permitted facility was at the time being properly operated,
- 6 (c) during the period of the emergency the permittee took all reasonable steps to minimize
7 levels of emissions that exceeded the emission standards or other requirements in the permit, and
- 8 (d) The permittee fulfilled notification requirements under Subparagraph (b), of Paragraph (5),
9 of Subsection C of 20.11.42.12 NMAC. This notice must contain a description of the emergency, any steps taken to
10 mitigate emissions, and corrective actions taken.

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

13 (4) This provision is in addition to any emergency or upset provision contained in any applicable
14 requirement, except that 20.11.42 NMAC sources shall not be subject to the provisions of 20.11.90.12 NMAC for
15 permit terms and conditions issued under 20.11.42 NMAC.
16 [3/1/94 . . .12/1/95; 20.11.42.12 NMAC - Rn, 20 NMAC 11.42.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.42.II.1,
17 10/1/02]

18
19 **20.11.42.13 PERMIT PROCESSING:**

20 **A. Action on Permit Applications:**

21 (1) A permit (including permit renewal) or permit modification shall only be issued if all of the
22 following conditions have been met:

- 23 (a) the Department has received a complete application for a permit, permit modification, or
24 permit renewal, except that a complete application need not be received before issuance of a general permit under
25 Subsection D of 20.11.42.12 NMAC,
- 26 (b) except for administrative and minor permit modifications, the Department has complied
27 with the requirements for public participation procedures under Subsection B of 20.11.42.13 NMAC,
- 28 (c) except for administrative amendments, the Department has complied with the requirements
29 for notifying and responding to affected programs under Subsection C of 20.11.42.13 NMAC,
- 30 (d) the conditions of the permit provide for compliance with all applicable requirements, and
- 31 (e) the Administrator has received a copy of the proposed permit and any notices required
32 under Subsection C of 20.11.42.13 NMAC, and has not objected to issuance of the permit within the time period
33 specified within that subsection.

34 (2) The Department shall, within sixty (60) days after its receipt of an application for a permit or
35 significant permit modification, review such application for completeness. Unless the department determines that an
36 application is not complete, requests additional information or otherwise notifies the applicant of incompleteness
37 within sixty (60) days of receipt of an application, the application shall be deemed complete. When additional
38 information is requested by the department prior to ruling an application complete, receipt of such information shall
39 be processed as a new application for purposes of this section. If the application is judged complete, a certified
40 letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be
41 sent to the applicant stating what additional information or points of clarification are necessary to judge the
42 application complete.

43 (3) The Department shall take final action on each permit application (including a request for permit
44 renewal) within twelve (12) months after an application is ruled complete by the Department, except that:

- 45 (a) for sources in operation on or before the effective date of 20.11.42 NMAC and which
46 submit to the Department timely and complete applications in accordance with Subsection A of 20.11.42.12 NMAC,
47 the department shall take final action on one third of such applications annually over a period not to exceed three (3)
48 years after such effective date,
- 49 (b) any complete permit application containing an early reduction demonstration under Section
50 112(i)(5) of the Federal Act shall be acted on within nine (9) months of deeming the application complete, and
- 51 (c) the acid rain portion of permits for acid rain sources shall be acted upon in accordance with
52 the deadlines in Title IV of the Federal Act and the regulations promulgated thereunder.

53 (4) If a timely and complete application for a permit renewal is submitted, consistent with Subsection
54 A of 20.11.42.12 NMAC, but the department has failed to issue or disapprove the renewal permit before the end of
55 the term of the previous permit, then the permit shall not expire and all the terms and conditions of the permit shall
56 remain in effect until the renewal permit has been issued or disapproved.

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1 (5) Permits being renewed are subject to the same procedural requirements, including those for public
2 participation, affected program and EPA review, that apply to initial permit issuance.

3 (6) The Department shall state within the draft permit the legal and factual basis for the draft permit
4 conditions (including references to the applicable statutory or regulatory provisions with dates of latest
5 amendments).

6 (7) The Department shall grant or disapprove the permit based on information contained in the
7 department's administrative record. The administrative record shall consist of the application, any additional
8 information submitted by the applicant, any evidence or written comments submitted by interested persons, any
9 other evidence considered by the Department, and, if a public hearing is held, the evidence submitted at the hearing.

10 (8) If the Department grants or disapproves a permit or permit modification, the Department shall
11 notify the applicant by certified mail of the action taken and the reasons therefore. If the department grants a permit
12 or modification, the Department shall mail the permit or modification, including all terms and conditions, to the
13 applicant by certified mail.

14 (9) Voluntary Discontinuation: Upon request by the permittee, the Department shall permanently
15 discontinue a Part 42 permit. Permit discontinuance terminates the permittee's right to operate the source under the
16 permit. The Department shall confirm the permit discontinuance by certified letter to the permittee.

17 (10) No permit shall be issued by failure of the Department to act on an application or renewal.

18 **B. Public Participation:**

19 (1) Proceedings for all permit issuances (including renewals), significant permit modifications,
20 reopenings, revocations and terminations, and all modifications to the department's list of insignificant activities,
21 shall include public notice and provide an opportunity for public comment. The Department shall provide thirty
22 (30) days for public and affected program comment. The department may hold a public hearing on the draft permit
23 for any reason it deems appropriate, and shall hold such a hearing in the event of significant public interest. The
24 Department shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

25 (2) Public notice and notice of public hearing shall be given by publication in a newspaper of general
26 circulation, to persons on a mailing list developed by the Department (including those who request in writing to be
27 on the list), and by other means if necessary to assure adequate notice to the affected public.

28 (3) The public notice shall identify:

- 29 (a) the affected facility,
- 30 (b) the names and addresses of the applicant or permittee and its owners,
- 31 (c) the name and address of the department,
- 32 (d) the activity or activities involved in the permit action,
- 33 (e) the emissions change(s) involved in any permit modification,
- 34 (f) the name, address and telephone number of a person from whom interested persons may
35 obtain additional information, including copies of the permit draft, the application, and relevant supporting
36 materials,
- 37 (g) a brief description of the comment procedures required by the Department, and
- 38 (h) as appropriate, a statement of procedures to request a hearing, or the time and place of any
39 scheduled hearing.

40 (4) Notice of public hearing shall identify:

- 41 (a) the affected facility,
- 42 (b) the names and addresses of the applicant or permittee and its owners,
- 43 (c) the name and address of the department,
- 44 (d) the activity or activities involved in the permit action,
- 45 (e) the name, address and telephone number of a person from whom interested persons may
46 obtain additional information,
- 47 (f) a brief description of hearing procedures, and
- 48 (g) the time and place of the scheduled hearing.

49 (5) The time, date, and place of the hearing shall be determined by the department. The Department
50 shall appoint a hearing officer. A transcript of the hearing shall be made at the request of either the Department or
51 the applicant and at the expense of the person requesting the transcript. At the hearing, all interested persons shall
52 be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses
53 testifying at the hearing.

54 (6) The Department shall keep a record of the commenters and also of the issues raised during the
55 public participation process so that the Administrator may fulfill his or her obligation under Section 505(b)(2) of the

1 Federal Act to determine whether a citizen petition may be granted. Such records shall be available to the public
2 upon request.

3 (7) The Department shall provide such notice and opportunity for participation by affected programs
4 as is provided for by Subsection C of 20.11.42.13 NMAC.

5 **C. Review by the Administrator and Affected Programs:**

6 (1) **Notification:** The Department shall not issue an operating permit (including permit renewal or
7 reissuance), minor permit modification or significant permit modification, until affected programs and the
8 Administrator have had an opportunity to review the proposed permit as required under this section. Permits for
9 source categories waived by the Administrator from this requirement and any permit terms or conditions, which are
10 not required under the Federal Act or under any of its requirements, are not subject to Administrator review or
11 approval.

12 (a) Within five (5) days of notification by the Department that the application has been
13 determined complete, the applicant shall provide a copy of the complete permit application (including the
14 compliance plan and all additional materials submitted to the Department) directly to the Administrator. The permit
15 or permit modification shall not be issued without certification to the department of such notification. The
16 department shall provide to the Administrator a copy of each draft permit, each proposed permit, each final
17 operating permit, and any other relevant information requested by the Administrator.

18 (b) The Department shall provide notice of each draft permit to any affected program on or
19 before the time that the department provides this notice to the public under Subsection B of 20.11.42.13 NMAC,
20 except to the extent that minor permit modification procedures require the timing of the notice to be different.

21 (c) The Department shall keep for five (5) years such records and submit to the Administrator
22 such information as the Administrator may reasonably require to ascertain whether the program complies with the
23 requirements of the Federal Act or related applicable requirements.

24 **(2) Responses to Objections:**

25 (a) No permit for which an application must be transmitted to the Administrator under this Part
26 shall be issued by the Department if the Administrator, after determining that issuance of the proposed permit would
27 not be in compliance with applicable requirements, objects to such issuance in writing within forty-five (45) days of
28 receipt of the proposed permit and all necessary supporting information.

29 (b) If the Administrator does not object in writing under Subparagraph (a) above, any person
30 may, within sixty (60) days after the expiration of the Administrator's 45-day review period, petition the
31 Administrator to make such objection. Any such petition shall be based only on objections to the permit that were
32 raised with reasonable specificity during the public comment period provided for in Subsection B of 20.11.42.13
33 NMAC, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or
34 unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of
35 a petition filed under this subparagraph, the Department shall not issue the permit until the Administrator's objection
36 has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if
37 the permit was issued after the end of the 45-day review period and prior to the Administrator's objection.

38 (c) The Department, as part of the submittal of the proposed permit to the Administrator (or as
39 soon as possible after the submittal for minor permit modification procedures allowed under Paragraph (2), of
40 Subsection E of 20.11.42.13 NMAC), shall notify the Administrator and any affected program in writing of any
41 refusal by the Department to accept all recommendations for the proposed permit that the affected program
42 submitted during the public or affected program review period. The notice shall include the department's reasons for
43 not accepting any such recommendation. The Department is not required to accept recommendations that are not
44 based on federally enforceable applicable requirements.

45 **D. Petitions for Review of Final Action:**

46 **(1) Hearing Before the Board:**

47 (a) Any person who participated in a permitting action before the Department and who is
48 adversely affected by such permitting action may file a petition for hearing before the Board. For the purposes of
49 this section, permitting action shall include the failure of the Department to take final action on an application for a
50 permit (including renewal) or permit modification within the time specified in 20.11.42 NMAC.

51 (b) The petition shall be made in writing to the Board within thirty (30) days from the date
52 notice is given of the Department's action and shall specify the portions of the permitting action to which the
53 petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by this
54 subparagraph, and attach a copy of the permitting action for which review is sought. Unless a timely request for
55 hearing is made, the decision of the Department shall be final. The petition shall be copied simultaneously to the
56 Department upon receipt of the appeal notice. If the petitioner is not the applicant or permittee, the petitioner shall

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1 mail or hand-deliver a copy of the petition to the applicant or permittee. The Department shall certify the
2 administrative record to the Board.

3 (c) If a timely request for hearing is made, the Board shall hold a hearing within ninety (90)
4 days of receipt of the petition in accordance with the Joint Air Quality Control Board Ordinances pursuant to the
5 New Mexico Air Quality Control Act Section 74-2-7 NMSA 1978.

6 **(2) Judicial Review:**

7 (a) Any person who is adversely affected by an administrative action taken by the Board
8 pursuant to Paragraph (1), of Subsection D of 20.11.42.13 NMAC may appeal to the Court of Appeals in accordance
9 with the Joint Air Quality Control Board Ordinances pursuant to the New Mexico Air Quality Control Act Section
10 74-2-9 NMSA 1978. Petitions for judicial review must be filed no later than thirty (30) days after the administrative
11 action.

12 (b) The judicial review provided for by Subsection D of 20.11.42.13 NMAC shall be the
13 exclusive means for obtaining judicial review of the terms and conditions of the permit.

14 **E. Permit Modifications:**

15 **(1) Administrative Permit Amendments:**

16 (a) An administrative permit amendment is one that:
17 (i) corrects typographical errors,
18 (ii) provides for a minor administrative change at the source, such as a change in the
19 address or phone number of any person identified in the permit,
20 (iii) incorporates a change in the permit solely involving the retiring of an emissions unit,
21 (iv) requires more frequent monitoring or reporting by the permittee, or
22 (v) any other type of change which has been determined by the Department and the
23 Administrator to be similar to those in this paragraph.

24 (b) Changes in ownership or operational control of a source may be made as administrative
25 amendments provided that:

26 (i) a written agreement, containing a specific date for transfer of permit responsibility,
27 coverage, and liability between the current and new permittee, has been submitted to the Department, and either the
28 Department has determined that no other change in the permit is necessary, or changes deemed necessary by the
29 Department have been made,
30 (ii) the new owners have submitted the application information required in Subparagraph
31 (b), of Paragraph (4), Subsection A of 20.11.42.12 NMAC,
32 (iii) no grounds exist for permit termination, as set out in Items (ii) and (iii), of
33 Subparagraph (c), of Paragraph (1), of Subsection F of 20.11.42.13 NMAC, and
34 (iv) the permittee has published a public notice of the change in ownership of the source
35 in a newspaper of general circulation in the area where the source is located.

36 (c) The Department may incorporate administrative permit amendments without providing
37 notice to the public or affected programs, provided that it designates any such permit modifications as administrative
38 permit amendments and submits a copy of the revised permit to the Administrator.

39 (d) The Department shall take no more than sixty (60) days from receipt of a request for an
40 administrative permit amendment to take final action on such request. The permittee may implement the changes
41 outlined in Items (i) through (iv), of Subparagraph (a), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC
42 immediately upon submittal of the request for the administrative amendment. The permittee may implement the
43 changes outlined in Item (v), of Subparagraph (a), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC or
44 Subparagraph (b), of Paragraph (1), Subsection E of 20.11.42.13 NMAC above upon approval of the administrative
45 amendment by the Department.

46 **(2) Minor Permit Modifications:**

47 (a) Minor permit modification procedures may be used only for those permit modifications
48 that:

49 (i) do not violate any applicable requirement,
50 (ii) do not involve relaxation of existing monitoring, reporting, or record keeping
51 requirements in the permit,
52 (iii) do not require or change a case-by-case determination of an emission limitation or
53 other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or
54 increment analysis,

55 (iv) do not seek to establish or change a permit term or condition for which there is no
56 corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable

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1 requirement to which the source would otherwise be subject. Such terms and conditions include any federally
2 enforceable emissions cap assumed to avoid classification as a Title I modification and any alternative emissions
3 limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Federal Act,

4 (v) are not Title I modifications, and

5 (vi) are not required by the Department to be processed as a significant modification
6 pursuant to Paragraph (3), Subsection E of 20.11.42.13 NMAC.

7 (b) A permittee shall not submit multiple minor permit modification applications that may
8 conceal a larger modification that would not be eligible for minor permit modification procedures. The Department
9 may, at its discretion, require that multiple related minor permit modification applications be submitted as a
10 significant permit modification.

11 (c) An application requesting the use of minor permit modification procedures shall meet the
12 requirements of Paragraphs (3) and (4), of Subsection A of 20.11.42.12 NMAC and shall include:

13 (i) a description of the change, the emissions resulting from the change, and any new
14 applicable requirements that will apply if the change occurs,

15 (ii) the applicant's suggested draft permit,

16 (iii) certification by a responsible official, consistent with Paragraph (5), of Subsection A
17 of 20.11.42.12 NMAC, that the proposed modification meets the criteria for use of minor permit modification
18 procedures and a request that such procedures be used, and

19 (iv) if the requested permit modification would affect existing compliance plans or
20 schedules, related progress reports, or certification of compliance requirements, an outline of such effects.

21 (d) The Department shall, within thirty (30) days after its receipt of an application for a minor
22 permit modification, review such application for completeness. Unless the Department determines that an
23 application is not complete, requests additional information or otherwise notifies the applicant of incompleteness
24 within thirty (30) days of receipt of an application, the application shall be deemed complete. If the application is
25 judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete
26 a certified letter shall be sent to the applicant stating what additional information or points of clarification are
27 necessary to judge the application complete.

28 (e) Within five (5) working days of notification by the Department that the minor permit
29 modification application has been ruled complete, the applicant shall meet its obligation under Paragraph (1), of
30 Subsection C of 20.11.42.13 NMAC to notify the Administrator and affected programs of the requested permit
31 modification. The Department promptly shall send any notice required under Subparagraph (b), of Paragraph (1), of
32 Subsection C of 20.11.42.13 NMAC and Paragraph (2), of Subsection C of 20.11.42.13 NMAC] to the
33 Administrator and affected programs.

34 (f) The permittee may make the change proposed in its minor permit modification application
35 immediately after such application is deemed complete. After the permittee makes the change allowed by the
36 preceding sentence, and until the Department takes any of the actions specified in Subparagraph (g), of Paragraph
37 (2), of Subsection E of 20.11.42.13 NMAC below, the permittee must comply with both the applicable requirements
38 governing the change and the proposed permit terms and conditions. During this time period, the permittee need not
39 comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its
40 proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to
41 modify may be enforced against it.

42 (g) The Department may not issue a final minor permit modification until after the
43 Administrator's 45-day review period of the proposed permit modification or until EPA has notified the Department
44 that the Administrator will not object to issuance of the permit modification, although the Department may approve
45 the permit modification prior to that time. Within ninety (90) days of ruling the application complete under minor
46 permit modification procedures or within fifteen (15) days after the end of the Administrator's 45-day review period
47 under, whichever is later, the Department shall:

48 (i) issue the permit modification as it was proposed,

49 (ii) disapprove the permit modification application,

50 (iii) determine that the requested modification does not meet the minor permit
51 modification criteria and should be reviewed under the significant modification procedures, or

52 (iv) revise the draft permit modification and transmit to the Administrator the new
53 proposed permit modification as required by Paragraph (1), of Subsection C of 20.11.42.13 NMAC.

54 **(3) Significant Permit Modifications:**

55 (a) A significant permit modification is:

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1 (i) any revision to an operating permit that does not meet the criteria under the provisions
2 for administrative permit amendments under Paragraph (1), of Subsection E of 20.11.42.13 NMAC or for minor
3 permit modifications under Paragraph (2), of Subsection E of 20.11.42.13 NMAC above,

4 (ii) any modification that would result in any relaxation in existing monitoring, reporting
5 or record keeping permit terms or conditions,

6 (iii) any modification for which action on the application would, in the judgment of the
7 department, require decisions to be made on significant or complex issues, and

8 (iv) changes in ownership which do not meet the criteria of Subparagraph (b), of
9 Paragraph (1), of Subsection E of 20.11.42.13 NMAC.

10 (b) For significant modifications which are not required to undergo pre-construction permit
11 review and approval, changes to the source which qualify as significant permit modifications shall not be made until
12 the department has issued the operating permit modification.

13 (c) For significant modifications which have undergone pre-construction permit review and
14 approval, the permittee shall:

15 (i) before commencing operation, notify the department in writing of any applicable
16 requirements and operating permit terms and conditions contravened by the modification, emissions units affected
17 by the change, and allowable emissions increases resulting from the modification, and

18 (ii) within twelve (12) months after commencing operation, file a complete operating
19 permit modification application.

20 (d) Where an existing operating permit would specifically prohibit such change, the permittee
21 must obtain an operating permit modification before commencing operation or implementing the change.

22 (e) Significant permit modifications shall meet all requirements of 20.11.42 NMAC for permit
23 issuance, including those for applications, public participation, review by affected programs and review by the
24 Administrator.

25 (f) The Department shall complete review on the majority of significant permit modification
26 applications within nine (9) months after the Department rules the applications complete.

27 **(4) Modifications to Acid Rain Sources:** Administrative permit amendments and permit
28 modifications for purposes of the acid rain portion of the permit shall be governed by regulations promulgated by
29 the Administrator under Title IV of the Federal Act.

30 **F. Permit Reopening, Revocation or Termination:**

31 **(1) Action by the Department:**

32 (a) Each permit shall include provisions specifying the conditions under which the permit will
33 be reopened prior to the expiration of the permit. A permit shall be reopened and revised for any of the following,
34 and may be revoked and reissued for (iii) or (iv) of the following:

35 (i) additional applicable requirements under the Federal Act become applicable to a
36 major source with a remaining permit term of three (3) or more years. Such a reopening shall be completed not later
37 than eighteen (18) months after promulgation of the applicable requirement. No such reopening is required if the
38 effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit
39 or any of its terms or conditions have been extended past the expiration date of the permit pursuant to Paragraph (4),
40 Subsection A of 20.11.42.13 NMAC,

41 (ii) additional requirements (including excess emissions requirements) become
42 applicable to a source under the acid rain program promulgated under Title IV of the Federal Act. Upon approval by
43 the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit,

44 (iii) the Department or the Administrator determines that the permit contains a material
45 mistake or that inaccurate statements were made in establishing the terms or conditions of the permit, or

46 (iv) the Department or the Administrator determines that the permit must be revised or
47 revoked and reissued to assure compliance with the applicable requirements, and

48 (v) The Department determines that the permittee's direct or indirect emissions of
49 greenhouse gases, either alone or in combination with other sources, has or will constitute or contribute to a climate
50 nuisance. The Department shall reopen the permit to impose such additional permit conditions as it deems
51 necessary to systematically reduce the annual emission of greenhouse gases to below nuisance levels in the shortest
52 time practicable. Entities and facilities whose annual emissions are less than 10,000 metric tons of CO2e shall not
53 be subject to this provision.

54 (b) Proceedings to reopen and revise, or revoke and reissue, a permit shall affect only those
55 parts of the permit for which cause to reopen or revoke exists. Units for which permit conditions have been revoked
56 shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.

ATTACHMENT 4

1 (c) A permit, or an authorization to operate under a general permit, may be terminated when:
 2 (i) the permittee fails to meet the requirements of an approved compliance plan,
 3 (ii) the permittee has been in significant or repetitious non-compliance with the operating
 4 permit terms or conditions,
 5 (iii) the applicant or permittee has exhibited a history of willful disregard for
 6 environmental laws of any state or Tribal authority, or of the United States,
 7 (iv) the applicant or permittee has knowingly misrepresented a material fact in any
 8 application, record, report, plan, or other document filed or required to be maintained under the permit,
 9 (v) the permittee fails to pay fees required under the fee schedule in 20.11.2 NMAC,
 10 (vi) the permittee falsifies, tampers with or renders inaccurate any monitoring device or
 11 method required to be maintained under the permit,
 12 (vii) the Administrator has found that cause exists to terminate the permit.
 13 (d) The Department shall, by certified mail, provide a notice of intent to the permittee at least
 14 thirty (30) days in advance of the date on which a permit is to be reopened or revoked, or terminated, except that the
 15 Department may provide a shorter time period in the case of an emergency.

16 (2) **Action by the Administrator:** Within ninety (90) days, or longer if the Administrator extends
 17 this period, after receipt of written notification that the Administrator has found that cause exists to terminate,
 18 modify or revoke and reissue a permit the department shall forward to the Administrator a proposed determination
 19 of termination, modification, or revocation and reissuance, as appropriate. Within ninety (90) days from receipt of
 20 an Administrator objection to a proposed determination, the Department shall address and act upon the
 21 Administrator's objection.

22 (3) **Compliance Orders:** Notwithstanding any action which may be taken by the department or the
 23 Administrator under Paragraph (1) and (2), of Subsection F of 20.11.42.13 NMAC, a compliance order issued in
 24 accordance with the Joint Air Quality Control Board Ordinances pursuant to the New Mexico Air Quality Control
 25 Act Section 74-2-12 NMSA 1978 may include a suspension or revocation of any permit or portion thereof.

26 **F. Citizen Suit:** Pursuant to Section 304 of the Federal Act, 42 USC 7604, any person may
 27 commence certain civil actions under the Federal Act.

28 **G. Enforcement:** Notwithstanding any other provision in the New Mexico State Implementation
 29 Plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a
 30 person has violated or is in violation of any such plan.

31 (1) **Presumptively Credible Evidence:** Information from the use of the following methods is
 32 presumptively credible evidence of whether a violation has occurred at the source:

- 33 (a) a monitoring method approved for the source pursuant to 20.11.42 NMAC and incorporated
 34 into an operating permit, or
- 35 (b) compliance methods specified in the applicable plan.

36 (2) **Presumptively Credible Testing, Monitoring, or Information Gathering Methods:** The
 37 following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or
 38 information gathering methods:

- 39 (a) any federally enforceable monitoring or testing methods, including those in 40 CFR parts
 40 51, 60, 61 and 75; and
- 41 (b) other testing, monitoring or information gathering methods that produce information
 42 comparable to that produced by any method in Paragraphs (1) or (2), of Subsection H of 20.11.42.13 NMAC.
 43 [3/1/94. . .12/1/95; 20.11.42.13 NMAC - Rn, 20 NMAC 11.42.II.2, 10/1/02]

44
 45 **20.11.42.14 RADIONUCLIDES:** [Reserved]
 46 [12/1/95; 20.11.42.14 NMAC - Rn, 20 NMAC 11.42.II.3 & A, 10/1/02]

47
 48 **HISTORY OF 20.11.42 NMAC:**

49 **Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of
 50 public records - state records center and archives.
 51 Regulation No. 41, Operating Permits, 3/1/94.
 52 Regulation No. 41, Operating Permits, 12/16/94.

53
 54 **History of Repealed Material:** [Reserved]
 55

ATTACHMENT 4

1 **Other History:** Regulation No. 41, Operating Permits, filed 12/16/94 was **renumbered** and **reformatted** into first
2 version of the New Mexico Administrative Code as 20 NMAC 11.42, Operating Permits, filed 10/27/95.
3 20 NMAC 11.42, Operating Permits, filed 10/27/95, was **renumbered, reformatted, amended and replaced** by
4 20.11.42 NMAC, Operating Permits, effective 10/1/02.
5