

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 11 ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
3 **PART 40 SOURCE REGISTRATION**
4

5 **20.11.40.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box
6 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.
7 [20.11.40.1 NMAC - Rp, 20.11.40.1 NMAC, 4/14/14]
8

9 **20.11.40.2 SCOPE:** 20.11.40 NMAC applies to every person who intends to construct, operate or modify a
10 source that is subject to 20.11.40 NMAC or who has authority pursuant to 20.11.40 NMAC to operate a source that
11 triggers the emission thresholds in Subsection B of 20.11.40.2 NMAC, except as otherwise provided.

12 **A. Applicability:** Every person who intends to construct, operate or modify a stationary source
13 subject to 20.11.40 NMAC shall obtain an air quality source registration from the department:

14 (1) no later than 90 days after commencing construction of a new stationary source;

15 (2) if the person is operating an existing stationary source that meets the requirements of Subsection
16 B or Paragraph (3) of Subsection C of 20.11.40.2 NMAC but the person has not previously obtained a source
17 registration; or

18 (3) no later than 90 days after commencing a modification as defined in 20.11.40.7 NMAC.

19 **B. Emission thresholds:** Every person who proposes to construct or operate a new stationary
20 source, or proposes to modify an existing stationary source that will emit one or more regulated air contaminants for
21 which a federal, state or board ambient air quality standard exists, shall apply for and obtain a source registration as
22 required by 20.11.40 NMAC before commencing construction, operation or modification of the source if:

23 (1) the new stationary source will emit one ton per year (TPY) or more of any single regulated air
24 contaminant, when calculated at the contaminant's potential emission rate (PER);

25 (2) as a result of the modification, all activities at the source will emit one TPY or more of a
26 regulated air contaminant, when calculated at the contaminant's PER;

27 (3) the source will emit, one TPY or more of a single hazardous air pollutant (HAP) (listed at Section
28 112(b) of the federal Clean Air Act), or one TPY or more of any combination of HAPs; or,

29 (4) the source will emit one TPY or more of lead (Pb) or any combination of lead and its compounds,
30 when calculated at the contaminant's PER.

31 **C. Exemptions and Additional Information:**

32 (1) 20.11.40 NMAC does not apply to sources within Bernalillo county that are located on Indian
33 lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction.

34 (2) If any equipment or process is subject to or becomes subject to 20.11.63 NMAC, *New Source*
35 *Performance Standards for Stationary Sources*, or 20.11.64 NMAC, *Emission Standards for Hazardous Air*
36 *Pollutants for Stationary Sources*, then the owner or operator shall obtain a construction permit pursuant to 20.11.41
37 NMAC.

38 (3) If any equipment or process is defined as an affected facility under 40 CFR Part 60, *Standards of*
39 *Performance for New Stationary Sources*, or as a new source under 40 CFR Part 61, *National Emission Standards*
40 *for Hazardous Air Pollutants*, or as an affected source under 40 CFR Part 63, *National Emission Standards For*
41 *Hazardous Air Pollutants For Source Categories*, and the department has determined that a permit pursuant to
42 20.11.41 NMAC is not required, then the owner or operator shall obtain a source registration.

43 [20.11.40.2 NMAC - Rp, 20.11.40.2 NMAC, 4/14/14]
44

45 **20.11.40.3 STATUTORY AUTHORITY:** 20.11.40 NMAC is adopted pursuant to the authority provided
46 by the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control
47 Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 & 4; and the Joint Air Quality Control Board
48 Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.

49 [20.11.40.3 NMAC - Rp, 20.11.40.3 NMAC, 4/14/14]
50

51 **20.11.40.4 DURATION:** Permanent.

52 [20.11.40.4 NMAC - Rp, 20.11.40.4 NMAC, 4/14/14]
53

54 **20.11.40.5 EFFECTIVE DATE:** April 14, 2014, unless a later date is cited at the end of a section.

55 [20.11.40.5 NMAC - Rp, 20.11.40.5 NMAC, 4/14/14]
56

1 **20.11.40.6 OBJECTIVE:** To establish the requirements for obtaining a source registration.
2 [20.11.40.6 NMAC - Rp, 20.11.40.6 NMAC, 4/14/14]

3
4 **20.11.40.7 DEFINITIONS:** In addition to the definitions in 20.11.40 NMAC, the definitions in 20.11.1
5 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.40 NMAC shall
6 govern.

7 **A. “Air contaminant” or “contaminant”** means a substance, including any particulate matter, fly
8 ash, dust, fumes, gas, mist, smoke, vapor, microorganisms, radioactive material, any combination thereof or any
9 decay or reaction product thereof.

10 **B. “Air pollutant”, “pollutant”, “air pollution” or “pollution”** means the emission, except
11 emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a
12 duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably
13 interfere with the public welfare, visibility or the reasonable use of property.

14 **C. “Air pollution control equipment”** means any device, equipment, process or combination
15 thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or
16 convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

17 **D. “Air quality control act” or “state act”** means the state of New Mexico *Air Quality Control Act*,
18 Chapter 74, Article 2 NMSA 1978 and amendments thereto.

19 **E. “Ambient air”** means the outdoor atmosphere, but does not include the area entirely within the
20 geographical boundaries of the source from which the air contaminants are, or may be, emitted and where public
21 access is restricted within the boundaries.

22 **F. “Board” or “local board”** means the Albuquerque - Bernalillo county air quality control board or
23 its successor board pursuant to the state act.

24 **G. “Commence”, “commencement”, “commencing” or “commences”** means an owner or operator
25 has undertaken a continuous program of construction or modification, has entered into a binding contractual
26 obligation to undertake and complete a continuous program of construction within a reasonable time, or has acquired
27 the right to operate a source that is subject to 20.11.40 NMAC and plans to begin operating the source.

28 **H. “Construction”** means fabrication, erection, installation or relocation of a stationary source,
29 including but not limited to temporary installations and portable stationary sources.

30 **I. “Days”** means consecutive days except as otherwise specifically provided.

31 **J. “Department”** means the Albuquerque environmental health department or successor agency,
32 which is the administrative agency of the board.

33 **K. “Emission unit” or “unit”** means any article, machine, equipment, contrivance, process or
34 process line that emits or reduces, or may emit or reduce, the emissions of any air contaminant, except from motor
35 vehicles.

36 **L. “EPA”** means the United States environmental protection agency.

37 **M. “Federal clean air act”, “CAA” or “federal act”** means the federal Clean Air Act, 42 U.S.C.
38 Section 7401 through 7671 et seq., as amended.

39 **N. “Modification” or “to modify”** means a physical change in, or change in the method of operation
40 of a source that results in an increase in the PER of any regulated air contaminant emitted by the source or that
41 results in the emission of any regulated air contaminant not previously emitted; but does not include:

42 (1) a change in ownership of the source;

43 (2) routine maintenance, repair or replacement;

44 (3) installation of air pollution control equipment, and all related process equipment and materials
45 necessary for its operation, undertaken for the purpose of complying with regulations adopted by the environmental
46 improvement board or the local board or pursuant to the CAA; or

47 (4) unless previously limited by enforceable permit conditions:

48 (a) an increase in the production rate, if the increase does not exceed the operating design
49 capacity of the source;

50 (b) an increase in the hours of operation; or

51 (c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable
52 of accommodating such fuel or raw material or if use of an alternate fuel or raw material is caused by a natural gas
53 curtailment or emergency allocation or an other lack of supply of natural gas.

54 **O. “National emission standards for hazardous air pollutants” or “NESHAP”** means the
55 regulatory requirements, guidelines and emission limitations promulgated by the EPA pursuant to Section 112 of the
56 CAA.

1 **P. “New source performance standard” or “NSPS”** means the regulatory requirements, guidelines
2 and emission limitations promulgated by the EPA pursuant to Section 111 of the CAA.

3 **Q. “North American industry classification system” or “NAICS”** means the industry
4 classification system that is used by the statistical agencies of the United States, is issued by the federal office of
5 management and budget and replaced the standard industrial classification (SIC) system.

6 **R. “Operator”** means the local organization or subdivision of the firm or person, whether private,
7 corporate or public, that manages the operations of the stationary source.

8 **S. “Owner”** means the person or persons who own a source.

9 **T. “Part”** means an air quality control regulation organized under Title 20, Chapter 11 of the New
10 Mexico Administrative Code that has been adopted or amended by the board, unless otherwise noted.

11 **U. “Potential emission rate” or “PER”** means the emission rate of a source at its maximum
12 capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or
13 operational limitation on the capacity of the source to emit a regulated air contaminant (including air pollution
14 control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or
15 processed) shall be treated as part of its physical and operational design, but only if the limitation or the effect the
16 limitation would have on emissions is enforceable by the department pursuant to the state act or the federal act.

17 **V. “Process equipment” or “process equipment unit”** means any equipment, apparatus or device,
18 including chemical, industrial or manufacturing facilities such as ovens, mixing kettles, heating and reheating
19 furnaces, kilns, stills, dryers, roasters and equipment used in connection therewith, and all other methods or forms of
20 manufacturing or processing that may emit any air contaminant.

21 **W. “Regulated air contaminant”** means any air contaminant, the emission or ambient concentration
22 of which is regulated pursuant to the state act or the federal act.

23 **X. “Standard industrial classification” or “SIC”** means the code from the system used to classify
24 all industries in the United States economy that was administered by the federal statistical policy division of the
25 office of management and budget and in 1997 was replaced by the North American industry classification system
26 (NAICS).

27 **Y. “Stationary source” or “source”** means a structure, building, equipment, facility, installation or
28 operation that emits or may emit an air contaminant.

29 [20.11.40.7 NMAC - Rp, 20.11.40.7 NMAC, 4/14/14]

30
31 **20.11.40.8 VARIANCES:** A person may request a variance from 20.11.40 NMAC in accordance with the
32 procedures established in 20.11.7 NMAC, *Variance Procedure*.

33 [20.11.40.8 NMAC - Rp, 20.11.40.8 NMAC, 4/14/14]

34
35 **20.11.40.9 SAVINGS CLAUSE:** Any amendment to 20.11.40 NMAC that is filed with the state records
36 center and archives shall not affect actions pending for a violation of the state act, a city or county ordinance, a prior
37 version of 20.11.40 NMAC, another board regulation, or a permit or source registration issued by the department.
38 Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute,
39 ordinance or regulation in effect at the time the violation was committed.

40 [20.11.40.9 NMAC - Rp, 20.11.40.9 NMAC, 4/14/14]

41
42 **20.11.40.10 SEVERABILITY:** If for any reason any section, paragraph, sentence, clause, wording or
43 application of 20.11.40 NMAC or any federal or New Mexico standards incorporated herein is held unconstitutional
44 or otherwise invalid by any court or the EPA, the decision shall not affect the validity or application of the
45 remaining provisions of 20.11.40 NMAC.

46 [20.11.40.10 NMAC - Rp, 20.11.40.10 NMAC, 4/14/14]

47
48 **20.11.40.11 DOCUMENTS:** Documents incorporated and cited in 20.11.40 NMAC may be viewed at the
49 Albuquerque environmental health department, Suite 3023, One Civic Plaza NW, Albuquerque, NM 87102. Source
50 registration applications and supporting documentation shall be available for public inspection at the department’s
51 air quality division office, Suite 3023, One Civic Plaza NW, Albuquerque, New Mexico 87102.

52 [20.11.40.11 NMAC - Rp, 20.11.40.11 NMAC, 4/14/14]

53
54 **20.11.40.12 SOURCE REGISTRATION APPLICATION REVIEW FEE:** An application for a source
55 registration shall be accompanied by a check or money order in the amount required by 20.11.2 NMAC, *Fees*. No

1 application shall be deemed complete until the entire fee has been paid. Checks shall be made payable to the city of
2 Albuquerque as required by 20.11.2 NMAC, *Fees*.
3 [20.11.40.12 NMAC - Rp, 20.11.40.12 NMAC, 4/14/14]
4

5 **20.11.40.13 APPLICATION FOR SOURCE REGISTRATION OR MODIFICATION:**

6 **A. Application contents:** The following are the minimum elements that shall be included in the
7 source registration application before the department can determine whether the application is administratively
8 complete and ready for technical review. It is not necessary to include an element if the department has issued a
9 written waiver regarding the element and the waiver accompanies the application. However, the department shall
10 not waive any federal requirements. The source registration application shall include:

- 11 (1) a completed source registration application form provided by the department;
- 12 (2) the name, street address and mailing address, if any, of the applicant and the names, street
13 addresses and mailing addresses, if any, of the owner and all operators of the source if different than the applicant;
- 14 (3) name and location of source;
- 15 (4) the date the application was submitted to the department;
- 16 (5) attachments, including calculations, computations and all other analyses used by the applicant to
17 provide sufficient information to describe the PER and nature of all regulated air contaminants that the source may
18 emit, and the actual emissions that the source will emit under routine operations after construction or modification;
- 19 (6) a map, such as a 7.5 minute topographic quadrangle map published by the United States
20 geological survey or a map of equivalent or greater scale, detail and precision, including a city of Albuquerque or
21 county of Bernalillo zone atlas map that shows the proposed location of each process equipment unit involved in the
22 proposed construction or modification of the source;
- 23 (7) an aerial photograph showing the proposed location of each process equipment unit involved in
24 the proposed construction or modification of the source except for federal agencies or departments involved in
25 national defense or national security as confirmed and agreed to by the department in writing;
- 26 (8) a complete description of all sources of regulated air contaminants and a process flow diagram
27 depicting the process equipment unit or units at the facility, both existing and proposed, that are proposed to be
28 involved in routine operations and from which regulated air contaminant emissions are expected to be emitted;
- 29 (9) a full description of air pollution control equipment, including all calculations and the basis for all
30 control efficiencies presented, manufacturer's specifications sheets, and site layout and assembly drawings; UTM
31 (universal transverse mercator) coordinates shall be used to identify the location of each emission unit;
- 32 (10) a description of the equipment or methods proposed by the applicant to be used for emission
33 measurement;
- 34 (11) the maximum and normal operating schedules of the source after completion of construction or
35 modification;
- 36 (12) any other relevant information the department may reasonably require;
- 37 (13) the signature of the applicant, operator, owner or an authorized representative, certifying to the
38 accuracy of all information as represented in the application and attachments, if any; and
- 39 (14) a check or money order for the application fee required by 20.11.2 NMAC, *Fees*. The fees are
40 established to offset some or all of the reasonable costs of the department reviewing and acting upon an application
41 for a source registration and implementing and enforcing the source registration, excluding costs associated with an
42 enforcement action.

43 **B. Protection of confidential information:** Pursuant to NMSA 74-2-11, *Confidential information*:

- 44 (1) All records, reports or information relating to source registration applications obtained under the
45 state act by the department or the board shall be available to the public for inspection and copying except as
46 otherwise provided in Subsection B of 20.11.40.13 NMAC.
- 47 (2) Emissions data shall be available to the public for inspection and copying without exception.
- 48 (3) Items that may be treated as confidential are:
 - 49 (a) records, reports or information containing trade secrets, if they have not previously been
50 made publicly available;
 - 51 (b) confidential business information such as profits, costs or other confidential business
52 information that has not previously been made publicly available and is not required to be made publicly available
53 by any other law; and
 - 54 (c) records, reports or information relating to national security that is confidential as otherwise
55 provided by law and that has not previously been made publicly available.

1 (4) Any person subject to 20.11.40 NMAC who asserts that records, reports or information should be
2 treated as confidential under Subsection B of 20.11.40.13 NMAC may submit a written request to the department or
3 the local board requesting that the records, reports or information be held confidential. The records, reports or
4 information must be specifically marked as confidential at the time of submittal. Upon receipt of a request and
5 properly marked items to be treated as confidential, the department and local board shall maintain the items as
6 confidential except that the department or local board may consult with the person in writing if the department or
7 local board discovers that the items should not be held confidential and should be made available to the public for
8 inspection and copying. The department or local board shall give the person an opportunity to state in writing why
9 confidential treatment is justified or to or seek other legal remedies prior to release.

10 (5) If a person fails to mark the records, reports, or information as confidential at the time of
11 submittal, the department or local board may, in its discretion, release the records, reports or information without
12 further consultation with the person or may seek to verify the confidentiality of the record, report or information
13 with the person prior to release.

14 (6) The department or the local board shall evaluate claims of confidentiality pursuant to the
15 requirements of: the *Inspection of Public Records Act*, Sections 14-2-1 through 14-2-12 NMSA 1978; Section 74-2-
16 11 NMSA 1978, *Confidential Information*; 18 U.S.C. Section 1905, *Disclosure of confidential information*
17 *generally*; and any other applicable law.

18 (7) In evaluating a person's claims of confidentiality pursuant to Subsection B of 20.11.40.13
19 NMAC, the department or the local board shall notify the person of the department's or the local board's
20 determination by certified mail or electronic mail in a timely manner and shall include the reasons for its decision.
21 The burden of proof for claims of confidentiality is upon the person submitting the records, reports or information.

22 (8) Notwithstanding any determination of confidentiality under Subsection B of 20.11.40.13 NMAC,
23 the department or the local board may disclose any report, record or information:

24 (a) to other officers, employees or authorized representatives of the department, the local
25 board, the environmental improvement board, or the New Mexico environment department concerned with carrying
26 out the Air Quality Control Act;

27 (b) to officers, employees or authorized representatives of the United States environmental
28 protection agency concerned with carrying out the federal act; and

29 (c) when relevant, in any proceeding under the Air Quality Control Act or the federal act.

30 **C. Review of an Application:** Within 90 days from the date the application is received, the
31 department shall review its content and notify the applicant by certified mail that:

32 (1) the application is incomplete and state what specific additional material or clarification is
33 required;

34 (2) a construction permit *is not* required pursuant to 20.11.41 NMAC and construction may
35 commence pursuant to 20.11.40 NMAC; or

36 (3) a construction permit *is* required pursuant to 20.11.41 NMAC before construction may
37 commence; in which case the department will state in writing whether the application is complete with respect to the
38 requirements of each applicable permit regulation and specify what additional material or clarification is required if
39 it is not complete.

40 **D. Issuance of a source registration:** The department shall only issue a source registration to the
41 applicant if: a construction permit is not required pursuant to 20.11.41 NMAC, the application for a source
42 registration has been deemed complete, and the fee required by 20.11.40.12 NMAC has been received.

43 **E. Inspection:** Pursuant to NMSA 74-2-13, *Inspection*, the department director or an authorized
44 representative, upon presentation of credentials:

45 (1) shall have a right of entry to, upon or through any premises on which an emission source is
46 located or on which any records required to be maintained by regulations of the board, or by any permit condition
47 are located; and

48 (2) may at reasonable times:

49 (a) have access to and copy any records required to be established and maintained by
50 regulations of the board or any permit condition;

51 (b) inspect any monitoring equipment and method required by regulations of the board or by
52 any permit condition; and

53 (c) sample any emissions that are required to be sampled pursuant to regulation of the board or
54 any permit condition.

55 **F. Notification Requirements:**

1 (1) If a stationary source will be shut down for a period of one year or more, the owner and operator
2 shall notify the department in writing on a form provided by the department of the actual date of the shut down
3 within 30 days after the shutdown occurs.

4 (2) Within 30 days after any change of owner or operator, the former owner and operator of a
5 stationary source shall notify the department in writing on a form provided by the department of the name, address
6 and telephone number of the new owner and operator.

7 [20.11.40.13 NMAC - Rp, 20.11.40.13 NMAC, 4/14/14]
8

9 **20.11.40.14 APPLICANTS' ADDITIONAL LEGAL RESPONSIBILITIES:** The issuance of a source
10 registration does not relieve any person from responsibility for complying with applicable provisions of the federal
11 act, the state act or a regulation of the board.

12 [20.11.40.14 NMAC - Rp, 20.11.40.14 NMAC, 4/14/14]
13

14 **20.11.40.15 ENFORCEMENT:** Notwithstanding any other provision in the New Mexico state
15 implementation plan for air quality, any information may be used to determine whether a person has violated or is in
16 violation of the source registration issued pursuant to 20.11.40 NMAC,

17 [20.11.40.15 NMAC - Rp, 20.11.40.15 NMAC, 4/14/14]
18

19 **HISTORY OF 20.11.40 NMAC:**

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

22 Regulation No. 22, Registration of Air Contaminant Sources, 3/24/82.
23

24 **History of Repealed Material:**

25 20.11.40 NMAC, Source Registration, filed 8/30/02 - Repealed effective 4/14/14.
26

27 **Other History:** Regulation No. 22, Registration Of Air Contaminant Sources, 3/24/82 was **renumbered,**
28 **reformatted,** and **amended** into first version of the New Mexico Administrative Code as 20 NMAC 11.40, Source
29 Registration, filed 10/27/95.

30 20 NMAC 11.40, Source Registration, filed 10/27/95 was **renumbered, reformatted, amended and replaced** by
31 20.11.40 NMAC, Source Registration, effective 10/1/02.

32 20.11.40 NMAC, Source Registration, filed 8/30/02 was repealed and replaced by 20.11.40 NMAC, Source
33 Registration, effective 4/14/14.