

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 39 PERMIT WAIVERS AND AIR QUALITY NOTIFICATIONS FOR CERTAIN SOURCE CATEGORIES

20.11.39.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.
[20.11.39.1 NMAC - N, X/X/18]

20.11.39.2 SCOPE:

A. Applicability: 20.11.39 NMAC applies to the following stationary source categories in the city of Albuquerque and Bernalillo county.

(1) Emergency stationary reciprocating internal combustion engines (ES-RICE) as defined in 20.11.39.7 NMAC, except as otherwise provided in this Part.

(2) Gasoline dispensing facilities (GDF) as defined in 20.11.39.7 NMAC, except as otherwise provided in this Part.

B. Exemptions:

(1) 20.11.39 NMAC does not apply to stationary sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

(2) 20.11.39 NMAC does not apply to:

(a) gasoline dispensing facilities within Bernalillo County which meet the definition of a major source in 42 U.S.C. Section 7661; and

(b) groups of emergency stationary RICE within Bernalillo County which meet the definition of a major source in 42 U.S.C. Section 7661.

(3) any non-emergency stationary RICE engines.

(4) 20.11.39 NMAC does not apply to facilities which contain emission units:

(a) other than ES-RICE and GDFs, as defined in 20.11.39.7; and

(b) that require a construction permit pursuant to 20.11.41 NMAC.

(5) 20.11.39 NMAC does not apply to Part 39 sources located at a single family private

residence.

[20.11.39.2 NMAC - N, X/X/18]

20.11.39.3 STATUTORY AUTHORITY: 20.11.39 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-5, 74-2-5.1, 74-2-6 and 74-2-7; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Sections 9-5-1-4, 9-5-1-5, 9-5-1-6 and 9-5-1-7; and the Joint Air Quality Control Board Ordinance, Bernalillo County Code, Article II, Sections 30-33, 30-34, 30-35 and 30-36.

[20.11.39.3 NMAC - N, X/X/18]

20.11.39.4 DURATION: Permanent.

[20.11.39.4 NMAC - N, X/X/18]

20.11.39.5 EFFECTIVE DATE: XX XX, 2018, unless a later date is cited at the end of a section.

[20.11.39.5 NMAC - N, X/X/18]

20.11.39.6 OBJECTIVE:

A. To provide a procedure by which certain sources may qualify for waivers of source registration requirements pursuant to 20.11.40 NMAC or construction permit requirements pursuant to 20.11.41 NMAC;

B. To establish an alternative regulatory mechanism, other than those provided in 20.11.40 NMAC and 20.11.41 NMAC, by which to require certain source categories to comply with applicable air quality standards and regulations; and,

C. To authorize the department to issue Air Quality Notifications (AQN) for sources in certain source categories.

[20.11.39.6 NMAC - N, X/X/18]

20.11.39.7 DEFINITIONS: The definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.39 NMAC shall govern. Definitions provided in the applicable federal standards referenced below shall apply to source categories subject to those federal standards which are incorporated by reference into board regulations.

A. "Air Quality Notification" or "AQN" means a document issued by the department to the owner or operator of a source in a source category to which this Part applies to require that source to comply with applicable regulatory requirements.

B. "Emergency stationary RICE" or "ES-RICE" means any of the following:

(1) existing emergency stationary reciprocating internal combustion engines as defined in 40 CFR Part 63, Subpart ZZZZ, *National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines*, incorporated by reference in 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*;

(2) existing emergency stationary reciprocating internal combustion engines which emit more than two thousand pounds of any air contaminant per year and therefore may be subject to 20.11.40 NMAC, *Source Registration* or 20.11.41 NMAC, *Construction Permits*;

(3) new or reconstructed compression ignition emergency stationary reciprocating internal combustion engines as defined in 40 CFR Part 60 Subpart IIII, *Standards of Performance for Stationary Compression Ignition Internal Combustion Engines*, incorporated by reference in 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*; or

(4) new or reconstructed spark ignition emergency stationary reciprocating internal combustion engines as defined in 40 CFR Part 60 Subpart JJJJ, *Standards of Performance for Stationary Spark Ignition Internal Combustion Engines*, incorporated by reference in 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*.

C. "Gasoline dispensing facility" or "GDF" means a gasoline dispensing facility as defined in 40 CFR Part 63 Subpart CCCCCC, *National Emission Standards for Hazardous Air Pollutants for Gasoline Dispensing Facilities*, as incorporated by reference in 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*.

D. "Part 39 source" means a stationary source eligible to receive an AQN pursuant to Part 39.

E. "Prior authorization" means a registration or construction permit for a Part 39 source which was issued pursuant to either 20.11.40 NMAC or 20.11.41 NMAC if such Part 39 source would have been eligible to receive an AQN pursuant to Part 39 had it been in effect at the time the registration or construction permit was issued.

F. "Qualified small business" means a business that meets all of the following requirements:

(1) a business that has 100 or fewer employees;

(2) a small business concern as defined by the federal Small Business Act;

(3) a source that emits less than 50 tons per year of any individual regulated air pollutant, or less than 75 tons per year of all regulated air pollutants combined; and

(4) a source that is not a major source or major stationary source.

[20.11.39.7 NMAC - N, X/X/18]

20.11.39.8 VARIANCES: A person may request a variance from 20.11.39 NMAC, in accordance with the procedures in 20.11.7 NMAC, *Variance Procedure*, except that no variances shall be granted from any applicable federal requirement.

[20.11.39.8 NMAC - N, X/X/18]

20.11.39.9 SAVINGS CLAUSE: Any amendment to 20.11.39 NMAC that is filed with the state records center and archives shall not affect actions pending for violation of the state act, a city or county ordinance, a prior version of 20.11.39 NMAC, another board regulation or a permit issued by the department. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance or regulation in effect at the time the violation was committed.

[20.11.39.9 NMAC - N, X/X/18]

20.11.39.10 SEVERABILITY: If for any reason any section, paragraph, sentence, clause, wording or application of 20.11.39 NMAC or any federal or New Mexico standards incorporated herein is held unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity or application of the remaining provisions of 20.11.39 NMAC.

[20.11.39.10 NMAC - N, X/X/18]

20.11.39.11 DOCUMENTS: Documents incorporated and cited in 20.11.39 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102. Information on internet access to these documents may be obtained by contacting the department at (505) 768-2601.

[20.11.39.11 NMAC - N, X/X/18]

20.11.39.12 PERMIT WAIVERS:

A. Part 39 sources may qualify for waivers from construction permit requirements pursuant to 20.11.41 NMAC. Owners and operators of Part 39 sources may apply for an AQN rather than a construction permit when submitting an application to the department. If an owner or operator of a source establishes that it is a Part 39 source and demonstrates that the owner or operator will comply with all applicable regulations set out in Section 13 of this Part, the department shall waive compliance from further source registration or construction permitting requirements pursuant to 20.11.40 or 20.11.41 NMAC. This Part shall not waive any permit requirements for sources which are not ES-RICE or GDF.

B. No public notice is required if the department waives further permitting requirements for a Part 39 source. No department hearing shall be held for a Part 39 source.

C. The department's issuance of an AQN is not a permitting action and is not subject to petition to the Albuquerque-Bernalillo County Air Quality Control Board pursuant to Section 7 of the Air Quality Control Act, ROA Section 9-5-1-7 or Bernalillo County Ordinance Section 30-36.

[20.11.39.12 NMAC - N, X/X/18]

20.11.39.13 REQUIREMENTS FOR SOURCE CATEGORIES TO WHICH PART 39 APPLIES:

A. General requirements: All sources in any source category listed in this section shall comply with the following general requirements, in addition to any specific requirements for a source category.

(1) All Part 39 sources shall comply with any federal regulations which are incorporated by reference into board regulations and which apply to that source category.

(2) No owner or operator of a source in a source category to which this Part applies may construct or operate a Part 39 source without having first applied to the department for and received an AQN.

(3) The owner or operator of each Part 39 source shall submit an annual emissions inventory to the department by March 15th of each year.

(a) For their annual emission inventory, GDFs granted an AQN shall submit a report of their annual gasoline throughput for the previous January through December.

(b) For their annual emission inventory, ES-RICE granted an AQN shall submit a report of their annual operating hours for the previous January through December.

(4) Nothing in 20.11.39 NMAC relieves any owner or operator of any source from the responsibility to comply with any applicable requirement in local, state, or federal law.

(5) No Part 39 source may emit any regulated air pollutant in quantities which would meet the definition of a major source in 42 U.S.C. Section 7661.

B. Emergency stationary RICE: These sources shall comply with the appropriate local and federal regulations identified below, as amended.

(1) **Existing emergency stationary reciprocating internal combustion engines** shall comply with all applicable requirements in 40 CFR Part 63 Subpart ZZZZ, *National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines*, as incorporated by reference in 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources as amended*.

(2) **New or reconstructed compression ignition emergency stationary reciprocating internal combustion engines** shall comply with all applicable requirements in 40 CFR Part 60 Subpart IIII, *Standards of Performance for Stationary Compression Ignition Internal Combustion Engines*, as incorporated by reference in 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources as amended*.

(3) **New or reconstructed spark ignition emergency stationary reciprocating internal combustion engines** shall comply with all applicable requirements in 40 CFR Part 60 Subpart JJJJ, *Standards of Performance for Stationary Spark Ignition Internal Combustion Engines*, as incorporated by reference in 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources as amended*.

C. Gasoline dispensing facilities: These sources shall comply with 20.11.65.15 NMAC and all applicable requirements in 40 CFR Part 63 Subpart CCCCC, *National Emission Standards for Hazardous Air*

Pollutants for Gasoline Dispensing Facilities, as incorporated by reference in 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources as amended*.
[20.11.39.13 NMAC - N, X/X/18]

20.11.39.14 AIR QUALITY NOTIFICATION APPLICATION: Each owner or operator of a Part 39 source shall apply for an AQN with the department in compliance with the requirements of this section.

A. A person applying to the department for an AQN shall submit a completed application provided by the department. The department shall reject any incomplete application for an AQN.

B. The following information is required for the Department to determine that an application for an AQN is complete:

- (1) the name, street address and post office address, if any, of the owner and any operators of the source;
- (2) the name, street addresses and post office addresses, if any, of the applicant, if different from the owner or operators;
- (3) the date the application was submitted to the department;
- (4) sufficient attachments, including calculations, computations and all other analyses used by the applicant to provide information to describe the potential emission rate and nature of all regulated air contaminants that the source may emit and control measures used to comply with all applicable federal standards;
- (5) for GDFs, the anticipated annual gasoline throughput;
- (6) for ES-RICE, the anticipated maximum operating hours of the source;
- (7) any other relevant information that the department may reasonably require;
- (8) the signature of the applicant, certifying that the information represented in the application and attachments, if any, is true, accurate and complete and that the owner and all operators will comply with all applicable requirements in board regulations for that source category; and
- (9) a check, money order or other approved means of payment for the appropriate application fee required by 20.11.39.19 NMAC.

[20.11.39.14 NMAC - N, X/X/18]

20.11.39.15 AQN APPLICATION REVIEW: Upon the receipt of any application for an AQN, the department shall review the application as follows.

A. Upon receipt of an application for an AQN, the department shall review the application to determine, within 30 days of receipt, whether the application for the AQN and any attachments provide complete information as required by 20.11.39.14 NMAC.

B. If the department determines that the application is complete and that the source qualifies for an AQN, the department shall issue and send a copy of the AQN to applicant by electronic mail, or such other means as may be necessary. The department shall retain the original of the AQN.

C. If the department determines that the application for the AQN is incomplete, that Part 39 does not authorize the source to receive an AQN, or that some other action is necessary, up to and including denial of an AQN, the department shall inform the applicant by electronic mail, or such other means as may be necessary.

[20.11.39.15 NMAC - N, X/X/18]

20.11.39.16 TRANSFER OF PRIOR AUTHORIZATIONS TO AQNS: Prior authorizations shall remain in force, unless an owner or operator satisfies Subsection A or B.

A. The owner or operator of a prior authorization applies for a transfer to an AQN by submitting an AQN application.

B. The owner or operator submits a change in the information in a prior authorization, e.g., an application for an administrative permit revision, an application for a technical permit revision, or an application for a permit modification.

C. The department shall process transfer of a prior authorization to an AQN as set forth below.

(1) The department shall review the application within 30 days of receipt. If the application is complete and if the source is a Part 39 source which would have been eligible to receive an AQN had AQNs been available when the prior authorization was issued, the department shall issue an AQN and cancel the previous prior authorization. The department shall send a copy of the AQN by electronic mail, or such other means as may be necessary. The department shall retain the original of the AQN.

(2) If the department determines that the application is incomplete, or some other action is necessary, the department shall inform the owner or operator of a prior authorization by electronic mail, or such other means as may be necessary.

(3) Upon being issued an AQN, the owner or operator shall comply with all requirements of Part 39 and the AQN.
[20.11.39.16 NMAC - N, X/X/18]

20.11.39.17 COMPLIANCE AND ENFORCEMENT:

A. All owners or operators of Part 39 sources within Albuquerque-Bernalillo County shall comply with all applicable board regulations, whether set forth in their AQN or not.

B. The department issues AQNs relying on the accuracy and completeness of information provided in the application. Inaccurate or incomplete information in an application is a violation of 20.11.39 NMAC

C. Any knowing and willful false statement in an AQN application is a violation of 20.11.39 NMAC.

D. An ES-RICE which has been issued an AQN pursuant to Paragraph 2 of Subpart B of 20.11.39.7 NMAC may be operated for emergency use only or as necessary for exercising or maintenance of the engine.

E. The director may issue a compliance order requiring compliance and assessing a civil penalty not to exceed \$15,000.00 per day of noncompliance for any violation of any applicable board regulations by a Part 39 source. The director may also commence a civil action in district court for appropriate relief, including a temporary and permanent injunction.

F. The department may conduct scheduled and unscheduled inspections to ensure compliance with any applicable board regulations.

G. Upon presentation of credentials, the department:

(1) shall have a right of entry to, upon, or through any premises on which a Part 39 source is located or on which any records required to be maintained by any applicable board regulations;

(2) may at any reasonable time have access to and copy any records required to be established and maintained by any applicable board regulations;

(3) may inspect any monitoring equipment and method required by any applicable board regulations; and

(4) sample any emissions that are required to be sampled pursuant to any applicable board regulations.

H. Any credible evidence may be used to establish whether an owner or operator of a Part 39 source has violated any applicable board regulations. Credible evidence and testing shall include, but is not limited to:

(1) compliance methods specified in any applicable board regulations; or

(2) other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the department and EPA.

I. An owner or operator of a Part 39 source who violates an applicable board regulation may be subject to enforcement action as authorized in Sections 74-2-12, -12.1 and -14 NMSA 1978, and revised ordinances of Albuquerque Section 9-5-1-15, -98 and -99, or Bernalillo County Code, Article II, Sections 30-42 and -43.

20.11.39.18 AMENDING AN AIR QUALITY NOTIFICATION: Owners and operators of sources to which this Part applies shall notify the department within 30 days of any change in information in an effective AQN as follows.

A. Administrative Amendments:

(1) When information required by Paragraphs (1), (2), (3), or (8) of Subsection B of 20.11.39.14 NMAC changes, the owner or operator shall notify the department in writing of the new information within 30 days of the change. Failure to timely notify the department as required by this subsection is a violation of Part 39.

(2) The department shall notify the owner or operator within 30 days that it has received the changed information and shall issue an amended AQN by electronic mail or such other means as may be necessary.

(3) The owner or operator shall not be required to pay a fee for notifying the department of the change or receiving an amended AQN.

B. Technical Amendments:

(1) When an owner or operator proposes to change the operation of a Part 39 source which was described in information required by Paragraphs (4), (5), (6) or (7) of Subsection B of 20.11.39.14 NMAC, the owner or operator shall submit an application for an amended at least 30 days prior to making any change and shall

pay the appropriate fee with the application. Failure to timely apply to the department as required by this subsection is a violation of Part 39.

(2) Within 30 days of receiving the application, the department shall review the submitted information to determine whether it is complete.

(3) If the department determines that the information is complete and that the owner or operator is entitled to an amended AQN, the department shall inform the applicant of its determination and issue an amended AQN by electronic mail or such other means as may be necessary. No change may be made until the department issues an amended AQN or denies the amended AQN.

(4) If the department determines that the application for an amended AQN is incomplete, that Part 39 does not authorize the source to receive an amended AQN, or that some other action is necessary, up to and including denial of an amended AQN, the department shall inform the applicant by electronic mail, or such other means as may be necessary.

[20.11.39.18 NMAC - N, X/X/18]

20.11.39.19 FEES:

A. General requirements:

(1) Any person who submits any AQN application shall pay fees as set forth below.

(2) The department shall not review or issue an AQN until the owner or operator provides documentary proof satisfactory to the department that all applicable fees have been paid as required by 20.11.39 NMAC.

(3) All fees required to be paid at the time of submittal shall be paid by check, money order or other means approved by the department payable to the "City of Albuquerque air quality permit fund" and either be delivered in person to the Albuquerque Environmental Health Department, 3rd floor, Suite 3023 or 3047, Albuquerque – Bernalillo County Government Center, south building, One Civic Plaza NW, Albuquerque, NM, or mailed to Attn: Air Quality Program, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or on-line payment method approved by the department. The person delivering or filing a submittal shall attach a copy of the receipt of payment to the submittal as proof of payment.

(4) Failure of the owner or operator of a Part 39 source to pay a required fee is a violation of 20.11.39 NMAC.

(5) No fee or portion of a fee required by 20.11.39 NMAC shall be refunded.

(6) All money received by the department pursuant to this Section shall be deposited by the city of Albuquerque in the city's permit fund.

B. Application review fees: Each person applying for an AQN shall pay a fee as follows.

(1) **New AQN applications:** An owner or operator who submits an application for a new AQN subject to 20.11.39 NMAC shall pay an application review fee of \$549.00, as adjusted, at the time the AQN application is delivered to the department.

(2) **Technical AQN amendments:** An owner or operator of a Part 39 source who applies for a technical amendment of an AQN shall submit a fee of \$300.00, as adjusted, with the application.

(3) **Transfer of prior authorization to AQN:** An owner or operator of a Part 39 source who applies to transfer a prior authorization to an AQN shall submit a fee of \$300.00, as adjusted, with the application.

(4) **Qualified small business fee:** All qualified small businesses shall pay half of the fees in Subsection B of 20.11.39.19 NMAC.

C. Annual fees: Each person with a valid AQN shall pay an annual emission fee upon receiving an invoice from the department as follows.

(1) **Annual fees for ES-RICE AQNs:** The owner or operator of a source with an ES-RICE AQN shall pay annual fee of \$400.00, as adjusted, for each active ES-RICE AQN; or

(2) **Annual fees for GDF AQNs:** The owner or operator of a source with a GDF AQN shall pay an annual fee for each AQN based on the annual gasoline throughput from January through December of the previous year. For owners or operators of GDF AQNs that have not yet submitted an annual emission inventory, the annual fee shall be based on the estimate of annual gasoline throughput that the owner or operator provided in the AQN application. The department may recover annual fees in the following year if the annual fee was underestimated based on the AQN application. For AQNs that were required to submit an annual emission inventory within the previous 12 months, the annual fee shall be based on the amount of gasoline throughput reported in the source's most recently submitted annual emissions inventory. If the source has not submitted the most recent required annual emission inventory, the department may rely on the most recent throughput information in its records to issue an invoice, but may issue a supplemental invoice if appropriate. The fee schedule is as follows:

- (a) \$400.00, as adjusted, for annual gasoline throughput less than 1,200,000 gallons per year.
- (b) \$700.00, as adjusted, for annual gasoline throughput greater than or equal to 1,200,000 gallons per year and less than 2,000,000 gallons per year.
- (c) \$1,000.00, as adjusted, for annual gasoline throughput greater than or equal to 2,000,000 gallons per year and less than 3,000,000 gallons per year.
- (d) \$1,300.00, as adjusted, for annual gasoline throughput greater than or equal to 3,000,000 gallons per year and less than 4,000,000 gallons per year.
- (e) \$1,600.00, as adjusted, for annual gasoline throughput greater than or equal to 4,000,000 gallons per year and less than 5,000,000 gallons per year.
- (f) \$1,900.00, as adjusted, for annual gasoline throughput greater than or equal to 5,000,000 gallons per year and less than 6,000,000 gallons per year.
- (g) \$2,200.00, as adjusted, for annual gasoline throughput greater than or equal to 6,000,000 gallons per year and less than 7,000,000 gallons per year.
- (h) \$2,500.00, as adjusted, for annual gasoline throughput greater than or equal to 7,000,000 gallons per year and less than 8,000,000 gallons per year.
- (i) \$2,800.00, as adjusted, for annual gasoline throughput greater than or equal to 8,000,000 gallons per year and less than 9,000,000 gallons per year.
- (j) \$3,100.00, as adjusted, for annual gasoline throughput greater than or equal to 9,000,000 gallons per year and less than 10,000,000 gallons per year.
- (k) \$3,400.00, as adjusted, for annual gasoline throughput greater than or equal to 10,000,000 gallons per year and less than 11,000,000 gallons per year.
- (l) \$3,700.00, as adjusted, for annual gasoline throughput greater than or equal to 11,000,000 gallons per year and less than 12,000,000 gallons per year.
- (m) \$4,000.00, as adjusted, for annual gasoline throughput greater than or equal to 12,000,000 gallons per year and less than 13,000,000 gallons per year.
- (n) \$4,300.00, as adjusted, for annual gasoline throughput greater than or equal to 13,000,000 gallons per year and less than 14,000,000 gallons per year.
- (o) \$4,700.00, as adjusted, for annual gasoline throughput greater than or equal to 14,000,000 gallons per year and equal to or less than 15,384,615 gallons per year.

L. Consumer price index adjustments: Beginning January 1, 2019, and every January 1 thereafter, an increase based on the consumer price index shall be applied to all fees required by 20.11.39.19 NMAC. The fees shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Fee adjustments equal to or less than fifty cents (\$0.50) shall be rounded down to the next lowest whole dollar. The department shall post the fee rates on the city of Albuquerque environmental health department website. [20.11.39.19 NMAC - N, X/X/18]

HISTORY OF 20.11.39 NMAC: [Reserved]

History of Repealed Material: [Reserved]

Other History: [Reserved]