

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

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**IN THE MATTER OF THE PETITION TO
REPEAL CURRENT 20.11.41 NMAC, *AUTHORITY
TO CONSTRUCT*; ADOPT PROPOSED REPLACEMENT
20.11.41, *STATIONARY SOURCE PERMITS*; AND
INCORPORATE REPLACEMENT 20.11.41 NMAC
INTO THE NEW MEXICO STATE IMPLEMENTATION
PLAN FOR AIR QUALITY.**

AQCB Petition No. 2008- 2

Air Quality Division,
Environmental Health Department,
City of Albuquerque, Petitioner

Petition

**to Repeal Current 20.11.41, *Authority to Construct*; Adopt Proposed Replacement 20.11.41
NMAC, *Stationary Source Permits*; and Incorporate Replacement 20.11.41 NMAC, *Stationary
Source Permits*, into the New Mexico State Implementation Plan (SIP) for Air Quality
and for a Combined Hearing**

1. The Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division (AQD) asks the Albuquerque-Bernalillo County Air Quality Control Board (Board) for a combined Board hearing at which the Board will hear AQD's request that the Board repeal current 20.11.41 NMAC, *Authority to Construct*; adopt proposed replacement 20.11.41 NMAC, *Stationary Source Permits*; and incorporate replacement 20.11.41 NMAC, *Stationary Source Permits*, into the New Mexico State Implementation Plan (SIP) for Air Quality. This Petition includes the AQD's request that the Board authorize the Control Strategies Division to provide a court reporter and hearing officer for the hearing.

2. The New Mexico Air Quality Control Act (Air Act), NMSA 1978, Sections 74-2-4 and 74-2-5.B(1) (1967 as amended through 2007) (Air Act) authorizes and requires the Board the authority to adopt, amend and replace regulations regarding air pollution. The Air Act at NMSA 1978, §74-2-5.B(2) authorizes and requires the Air Board to adopt air quality plans, which also are known as SIPs. When new, amended or replaced regulations are adopted by the Board, the updated regulations are

incorporated in the SIP. The Air Act at NMSA 1978, §74-2-7, authorizes and requires the Board to adopt regulations regarding issuing air quality permits.

3. The AQD is petitioning the Board to repeal current 20.11.41 NMAC, *Authority to Construct* (Current Part 41); adopt replacement 20.11.41 NMAC, *Stationary Source Permits* (Proposed Part 41); and incorporate Proposed Part 41 in the SIP for Air Quality for the following reasons:

- Current Part 41 is an outdated regulation. There have been numerous substantive amendments to the New Mexico Air Quality Control Act since Current Part 41 was substantively amended. As an example, the Air Act generally requires AQD to make a final decision regarding a construction permit application within 90 days of the application being determined to be complete. Although AQD follows the 90-day timeline, the wording of current Part 41 provides 120 days, which is inconsistent with the Air Act. Current Part 41 must be changed so Part 41 will be consistent with applicable requirements of the Air Act.

- The Air Act and Current Part 41 include minimal wording regarding hearings or meetings before the AQD makes a decision about a pending permit application. Regarding public information hearings, although AQD has adopted increasing outreach, notice and other activities regarding public information hearings, the processes are not included in Current Part 41.

- The Air Act at NMSA 1978, §74-2-4.C, requires air quality standards and regulations within Bernalillo County to be “not lower than those required by regulations adopted by” the state Environmental Improvement Board (EIB). AQD’s review of Current Part 41 included a detailed comparison to EIB regulation 20.2.72 NMAC, *Construction Permits*, which resulted in substantive changes that have been incorporated in Proposed Part 41.

- AQD’s review of Current Part 41 provided an opportunity to review permitting in other jurisdictions, propose changes to many aspects of the permitting process, and resulted in

AQD giving two stakeholder review meetings (one for the public and one for the regulated community), followed by five stakeholder work group meetings, changes in proposed wording and AQD's review of multiple internal and external drafts before AQD released the September 23, 2008 Public Review Draft, which is Proposed Part 41.

•The resulting Proposed Part 41 incorporates significant changes to many aspects of the permitting process including:

- Applicability: a change in the description of the sources to which 20.11.41 NMAC will apply;
- Definitions;
- Application requirements;
- Public notice provided by the potential applicant before a Part 41 application is submitted;
- Increased public participation including information provided before and during the permitting process, detailed requirements regarding public information hearings, and expanded public notice provided by AQD;
- Permit decisions and appeals;
- Basis for permit denial;
- Permit conditions;
- Permit suspension or revocation;
- Relocation of portable stationary sources;
- Administrative and technical permit revisions;
- Permit reopening, revision and re-issuance; and
- Accelerated permit review as required by the Air Act at NMSA 1978, Section 74-2-7.B(8).

4. It is anticipated that the hearing will take approximately four hours or less.

5. Current 20.11.41 NMAC, *Authority to Construct*, is attached to this Petition as Exhibit #1.

Proposed replacement 20.11.41 NMAC, *Stationary Source Permits*, is attached to this Petition as Exhibit #2.

Respectfully submitted,



Isreal Tavares, Environmental Health Engineering Mgr.
Air Quality Division
City of Albuquerque, Environmental Health Department
11850 Sunset Gardens
Albuquerque, New Mexico 87121
(505) 768-1965

CERTIFICATION

I hereby certify that on September 23, 2008, an original and nine copies of this Petition to Repeal and Replace 20.11.41 NMAC and Incorporate Replacement 20.11.41 into the New Mexico State Implementation Plan for Air Quality, with a copy of the public review draft (PRD) of proposed and replacement Part 41 attached, were delivered to the following person for filing

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

and that on September 23, 2008, a copy of the Petition, with proposed replacement Part 41 attached, was sent to the Board attorney at the following email address:

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



Isreal Tavares, Env. Health Engineering Manager Air
Quality Division

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 41 AUTHORITY TO CONSTRUCT

20.11.41.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
 [3/21/77. . .12/1/95; 20.11.41.1 NMAC – Rn, 20 NMAC 11.41.1.1, 10/1/02]

20.11.41.2 SCOPE:

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

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

(1) Emissions Thresholds Requiring a Permit:

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

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

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

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

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

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

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

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

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

(2) Federal Source Classifications:

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

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

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

(3) Additional Permit Details:

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

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

(c) For all sources subject to this Part, applications for Authority-to-Construct permits shall be filed

prior to the commencement of construction, modification, or installation. Regardless of the anticipated commencement date, no construction, modification, or installation shall begin prior to issuance of the permit.

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

20.11.41.3 STATUTORY AUTHORITY: This Part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4. [3/21/77. . .12/1/95; 20.11.41.3 NMAC – Rn, 20 NMAC 11.41.I.3, 10/1/02]

20.11.41.4 DURATION: Permanent. [12/1/95; 20.11.41.4 NMAC – Rn, 20 NMAC 11.41.I.4, 10/1/02]

20.11.41.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section. [12/1/95; 20.11.41.5 NMAC – Rn, 20 NMAC 11.41.I.5 & A, 10/1/02]

20.11.41.6 OBJECTIVE: The objective of this Part is to insure that new facilities or modified existing facilities will not emit air pollution, which will cause violations of air pollution control regulations upon operation following construction. This procedure will protect the source owner's investment as well as uphold public concern and desire for input prior to commencement of construction of air pollution sources in Bernalillo County. [6/5/91. . .12/1/95; 20.11.41.6 NMAC – Rn, 20 NMAC 11.41.I.6, 10/1/02]

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

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

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

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

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

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

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

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

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

- (1) a change in ownership of the source,
- (2) routine maintenance, repair or replacement,
- (3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the CAA, or
- (4) unless previously limited by enforceable permit conditions:
 - (a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source,
 - (b) an increase in the hours of operation, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. “Stationary Source or Source” means a point of origin of air contaminant emissions which is configured as a permanently or temporarily immobile facility, building, or structure that houses, contains, or otherwise supports the installation of operating equipment or processes.

[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]

20.11.41.8 VARIANCES: [Reserved]

[12/1/95; 20.11.41.8 NMAC - Rn, 20 NMAC 11.41.I.8, 10/1/02]

20.11.41.9 SAVINGS CLAUSE: Any amendment to 20.11.41 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation 20, or 20.11.41 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part or regulation section in effect at the time the violation was committed.

[12/16/94. . .12/1/95; 20.11.41.9 NMAC – Rn, 20 NMAC 11.41.I.9, 10/1/02]

20.11.41.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[12/16/94. . .12/1/95; 20.11.41.10 NMAC – Rn, 20 NMAC 11.41.I.10, 10/1/02]

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

[12/1/95; 20.11.41.11 NMAC – Rn, 20 NMAC 11.41.I.11 & A, 10/1/02]

20.11.41.12 FEES FOR PERMIT APPLICATION REVIEW:

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

B. Checks shall be made payable to the City of Albuquerque if the source is located within the municipal limits of Albuquerque. Otherwise the appropriate fees shall be made payable to the County of Bernalillo.

[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 11.41.II.1, 10/1/02]

20.11.41.13 CONTENTS OF APPLICATIONS:

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

B. All applications shall:

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

(3) state the date of application,

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

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

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

(7) be accompanied by:

(a) a map, such as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey or a map of equivalent or greater scale, detail and precision such as from the City of Albuquerque or County of Bernalillo Zone Atlas showing the exact location of the proposed construction, or modification or installation of the source,

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

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

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

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

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

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

C. Protection of Confidential Information:

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

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

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

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

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

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

determination.

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

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

20.11.41.14 PUBLIC NOTICE AND PARTICIPATION:

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

- (1) make available for public inspection a list of all pending applications for permits,
- (2) prepare a summary of each application and make it available for public inspection as soon as the application is deemed complete by the Department,
- (3) within fifteen (15) days after the Department deems an application complete, publish a public notice in a local newspaper of general circulation. The notice shall include the name and address of the applicant, location of the source, a brief description of the proposed construction or modification, a summary of the estimated emissions and shall identify the manner in which comments or evidence on the application may be submitted to the Department,
- (4) allow all interested persons at least forty five but no more than sixty days from the date an application is deemed complete to submit written comments, evidence or to request a public hearing on the application,
- (5) mail written notice of the action taken on the permit application to those persons who submitted written comments or evidence,
- (6) within five (5) days after the Department deems the application complete, notify the appropriate State of New Mexico agency by certified mail, of the application and include the summary of the application,
- (7) on any permit application for a source which will emit, or has the potential to emit greater than 100 tons of any regulated air contaminant including any fugitive emissions of said contaminant, the Department shall notify the state Environmental Improvement Division by certified mail at least sixty days prior to commencement. Such notice shall include a summary of the application.

B. Public Hearings on Permits Involving Significant Public Interest: The Department shall hold a public hearing if the director determines that there is significant public interest. The time, date, and place of the hearing shall be determined by the Department. The Department shall give notice of the hearing to the applicant and the affected public. The director may appoint a hearing officer. A transcript of the hearing shall be made at the request of either the Department or the applicant and at the expense of the person requesting the transcript be made. At the hearing, all interested persons shall be given a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

[3/24/82. . . 7/21/87,6/5/91; 20.11.41.14 NMAC – Rn, 20 NMAC 11.41.II.3, 10/1/02]

20.11.41.15 PERMIT DECISIONS AND APPEALS:

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

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

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

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

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

F. If a timely request for public hearing is made; the Board shall hold such hearing within thirty (30) days of receipt of the request. The Department shall notify the applicant by certified mail of the date, time and place of the

hearing. In the hearing, the burden of proof shall be upon the applicant. The Board may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the Board shall sustain, modify or reverse the action of the Department within thirty (30) days.

[3/24/82. . . 7/21/87, 12/1/95, 20.11.41.15 NMAC – Rn, 20 NMAC 11.41.II.4, 10/1/02]

20.11.41.16 BASIS FOR PERMIT DENIAL:

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

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

- (c) instrumentation to monitor and record emission data including continuous emission monitoring, if appropriate,
 - (d) instrumentation to detect or activate alarms for emissions of specified hazardous air pollutants in order to protect public health,
 - (e) any other reasonable sampling, testing or ambient monitoring and meteorological facilities and protocol.
- (7) repetitive testing pursuant to 20.11.41.21 NMAC;
 - (8) to establish and maintain such records of the nature and amount of emissions and to make such periodic reports to the Department regarding the nature and amounts of emissions and the performance of air pollution control equipment as are necessary to carry out the purpose of the Air Quality Control Act;
 - (9) other reasonable conditions as the Department may deem necessary.
- C. Any term or condition imposed by the Department in a permit obtained pursuant to this Part shall apply to the same extent as a regulation of the Board.

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

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

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

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

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

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

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

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

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

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

20.11.41.22 EMERGENCY PERMITS:

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

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

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

section.

D. The requirements of Paragraphs (4) and (5), of Subsection A, of 20.11.41.14 NMAC; Subsection 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 apply to emergency permits processed under this section.

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

20.11.41.23 SYNTHETIC MINOR PERMITS:

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

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

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

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

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

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:

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]

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.

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

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 11 ALBUQUERQUE -BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
3 **PART 41 STATIONARY SOURCE PERMITS**

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) 768-2601.
7 [20.11.41.1 NMAC – Rp, 20.11.41.1 NMAC, 1/15/09]
8

9 **20.11.41.2 SCOPE:** 20.11.41 NMAC applies to every person who intends to construct, operate, modify,
10 relocate or make a technical revision to a source subject to 20.11.41 NMAC, except as otherwise provided.

11 **A. Applicability:** Every stationary source subject to 20.11.41 NMAC shall obtain an air quality
12 stationary source permit, permit modification, relocation approval or technical revision approval from the
13 department as required by 20.11.41 NMAC before commencing construction of a new stationary source or
14 commencing a modification, relocation, or technical revision if the proposed construction, modification, relocation
15 or technical revision will emit a regulated air contaminant that is subject to any of the emission thresholds, source
16 types, classifications or other requirements of Subsection A of 20.11.41.2 NMAC, except as otherwise provided in
17 20.11.41 NMAC.

18 **(I) Emission thresholds that require a stationary source permit for construction or**
19 **modification:**

20 **(a)** If a person proposes to construct a new stationary source that will emit one or more
21 regulated air contaminants for which a federal, state or board ambient air quality standard exists and if the source
22 will emit, when calculated at the contaminant's potential emission rate, 10 pounds per hour or more or 25 tons per
23 year or more of any single regulated air contaminant, then the person shall apply for a permit as required by
24 20.11.41 NMAC.

25 **(b)** If a person proposes a modification of a stationary source and the modification will emit
26 one or more regulated air contaminants for which a federal, state or board ambient air quality standard exists, and if,
27 as a result of the modification, all activities at the source will emit, when calculated at the contaminant's potential
28 emission rate, 10 pounds per hour or more or 25 tons per year or more of a regulated air contaminant, then the
29 person shall apply for a permit modification as required by 20.11.41 NMAC.

30 **(c)** If a person proposes to construct a new stationary source or proposes a modification of a
31 stationary source, and if the source will emit, when calculated at the contaminant's potential emission rate, two tons
32 per year or more of a single hazardous air pollutant (HAP) as defined by Section 112(b) of the federal Clean Air
33 Act, or five tons or more per year of any combination of HAP, then the proposed or existing source shall apply for a
34 permit or permit modification as required by 20.11.41 NMAC.

35 **(d)** If a stationary source was not required to obtain a permit pursuant to 20.11.41 NMAC
36 because the source was operating before August 31, 1972, if operations of the source have ceased for five or more
37 consecutive years, and if a contaminant proposed to be emitted by the source has a potential emission rate of 10
38 pounds per hour or more or 25 tons per year or more of any regulated air contaminant, then the owner or operator of
39 the source shall apply for and obtain a permit as required by 20.11.41 NMAC before the source begins operation.

40 **(e)** If a major stationary source or major modification as defined in 20.11.60 NMAC, *Permitting*
41 *in Nonattainment Areas*, also meets the applicability requirements of 20.11.41 NMAC, then the major stationary
42 source or modification shall apply for a permit pursuant to both 20.11.41 NMAC and 20.11.60 NMAC if either of
43 the following conditions applies:

44 **(i)** the source is or will be located within a nonattainment area for any NAAQS and will
45 emit the air contaminant or contaminants for which the area is in nonattainment, or will emit hydrocarbons in the
46 case of ozone nonattainment; or

47 **(ii)** the source is or will be located in an area that is in attainment of the NAAQS for the
48 air contaminant or air contaminants that the source will emit, but, before emissions offsets or trades are considered,
49 the ambient impact of the emissions from the source will exceed the significance levels in the table incorporated in
50 20.11.60.22 NMAC at any location within the impacted areas that is in nonattainment for the air contaminant or air
51 contaminants emitted by the source.

52 **(f)** If a person proposes to construct a new stationary source or proposes a modification of a
53 stationary source, and if the source will emit, when calculated at the contaminant's potential emission rate, five tons
54 per year or more of lead (Pb) or any combination of lead and its compounds per year, then the person shall apply for
55 a permit or permit modification as required by 20.11.41 NMAC.

1 (g) If a stationary source began construction after August 31, 1972 and the source is subject to
2 a board regulation that includes an equipment emission limitation, the source shall apply for a permit or permit
3 modification as required by 20.11.41 NMAC.

4 (2) **Source classifications; source types:** If a person proposes to construct a new stationary source,
5 modify an existing stationary source, construct a portable or temporary stationary source, or proposes a technical
6 revision and any of the following conditions apply, the person shall apply for and obtain a permit a permit
7 modification or technical revision approval pursuant to 20.11.41 NMAC before commencing construction or
8 modification:

9 (a) if a person proposes to install any equipment or process that is subject to 20.11.63 NMAC,
10 *New Source Performance Standards for Stationary Sources*, or 20.11.64 NMAC, *Emission Standards for Hazardous*
11 *Air Pollutants for Stationary Sources*;

12 (b) if a source meets the applicability requirements of 20.11.41 NMAC but also is a major
13 stationary source or a major modification as defined in 20.11.61 NMAC, *Prevention of Significant Deterioration*, in
14 which case the owner or operator shall apply for a permit pursuant to both 20.11.41 NMAC and 20.11.61 NMAC.

15 (c) if a source is a major source of HAP as defined in 40 CFR 63;

16 (3) **Sources that become subject to new NSPS or NESHAP.** If a person is operating a source that
17 becomes subject to a new NSPS or NESHAP, the person shall apply for a permit as required by 20.11.41 NMAC.

18 (4) **Additional Permit Requirements:**

19 (a) If a source includes more than one unit, the department may require a separate permit or
20 permit conditions for each unit that is not substantially interrelated with another unit. A common connection leading
21 to ductwork, pollution control equipment or a single stack, shall not, by itself, constitute a substantial
22 interrelationship.

23 (b) Although more than one air quality permitting regulation adopted by the board may apply
24 to a stationary source, including 20.11.40, 60, 61, 63, and 64 NMAC, nothing in 20.11.41 NMAC shall be construed
25 to require more than one permit application for each unit proposed for construction or modification. Definitions and
26 provisions included in specific federal program regulations shall apply to permit review of any regulated air
27 contaminant and source regulated by the federal NSPS, NESHAP, prevention of significant deterioration, visibility
28 or nonattainment requirements.

29 (c) For all sources subject to 20.11.41 NMAC, applications for permits shall be filed before
30 commencement of construction, modification, relocation or technical revision. Regardless of the anticipated
31 commencement date, no construction, modification, relocation or revision shall begin before the owner or operator
32 has received a permit or written approval from the department.

33 **B. Exemptions:**

34 (1) 20.11.41 NMAC does not apply to sources within Bernalillo county that are located on Indian
35 lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

36 (2) The following sources and activities shall not be reported in the permit application. Emissions
37 from such activities shall not be included in the calculation of the facility-wide potential emission rate under
38 Subparagraphs (a), (b), or (c) of Paragraph (1) of Subsection A of 20.11.41.2 NMAC. The following activities may
39 be commenced or changed without a permit or permit modification under 20.11.41 NMAC:

40 (a) activities which occur strictly for maintenance of grounds or buildings, including: lawn
41 care, pest control, grinding, cutting, welding, painting, woodworking, sweeping, general repairs, janitorial activities,
42 and building roofing operations;

43 (b) activities for maintenance of equipment or pollution control equipment, either inside or
44 outside of a building, including cutting, welding, and grinding, but excluding painting;

45 (c) exhaust emissions from forklifts, courier vehicles, front end loaders, graders, carts,
46 maintenance trucks, and fugitive emissions from fleet vehicle refueling operations, provided such emissions are not
47 subject to any requirements under the New Mexico Air Quality Control Act, NMSA 1978, NSPS, or NESHAP;

48 (d) use of fire fighting equipment and fire fighting training provided such emissions are not
49 subject to any requirements under NSPS or NESHAP;

50 (e) government military activities such as field exercise, explosions, weapons testing and
51 demolition to the extent that such activities:

52 (i) do not result in visible emissions entering publicly accessible areas; and

53 (ii) are not subject to a NSPS or NESHAP;

54 (f) use of portable aerospace ground equipment (such as power generators, compressors,
55 heaters, air conditions, lighting units) if the equipment is used in direct support of aircraft operations, and on or in

1 the immediate vicinity of an airfield, provided such emissions are not subject to any requirements under NSPS or
2 NESHAP;

3 (g) gases used to calibrate plant instrumentation, including continuous emission monitoring
4 (CEM) systems.

5 (3) An applicant for a permit is not required to obtain a permit for the following new or modified
6 sources and activities at a facility, but is required to report the following on permit application forms supplied by the
7 department: fuel burning equipment that is used solely for heating buildings for personal comfort or for producing
8 hot water for personal use and that:

9 (a) uses gaseous fuel and has a design rate of five million BTU per hour or less; or

10 (b) uses distillate oil, but not including waste oil, and has a design rate of one million
11 BTU per hour or less;

12 (4) After a permit has been issued, construction of the sources or commencement of the sources and
13 activities described in Paragraph (3) of Subsection B of 20.11.41.2 NMAC shall comply with the administrative
14 permit revision procedures in Subsection A of 20.11.41.28 NMAC. Emissions from the sources and activities
15 described in Paragraph (3) of Subsection B of 20.11.41.2 NMAC shall not be included in the facility-wide potential
16 emission rate calculation that is described in Subparagraphs (a) and (b) of Paragraph (1) of Subsection A of
17 20.11.41.2 NMAC, unless the sources or emissions are subject to any NSPS or NESHAP requirement of 20.11.41
18 NMAC.

19 [20.11.41.2 NMAC – Rp, 20.11.41.2 NMAC, 1/15/09]

20
21 **20.11.41.3 STATUTORY AUTHORITY:** 20.11.41 NMAC is adopted pursuant to the authority provided in
22 the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control
23 Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 & 4; and the Joint Air Quality Control Board
24 Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.

25 [20.11.41.3 NMAC – Rp, 20.11.41.3 NMAC, 1/15/09]

26
27 **20.11.41.4 DURATION:** Permanent.

28 [20.11.41.4 NMAC – Rp, 20.11.41.4 NMAC, 1/15/09]

29
30 **20.11.41.5 EFFECTIVE DATE:** January 15, 2009, unless a later date is cited at the end of a section.

31 [20.11.41.5 NMAC – Rp, 20.11.41.5 NMAC, 1/15/09]

32
33 **20.11.41.6 OBJECTIVE:** To establish the requirements for obtaining a stationary source permit, permit
34 modification, relocation and administrative and technical permit revisions.

35 [20.11.41.6 NMAC – Rp, 20.11.41.6 NMAC, 1/15/09]

36
37 **20.11.41.7 DEFINITIONS:** In addition to the definitions in 20.11.41 NMAC, the definitions in 20.11.1
38 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.41 NMAC shall
39 govern.

40 A. “Act” or “state act” means the New Mexico Air Quality Control Act, Chapter 74, Article 2
41 NMSA 1978.

42 B. “Administrative permit revision” or “administrative revision” means a revision to a stationary
43 source permit for a source that is requested and approved pursuant to Subsection A of 20.11.41.28 NMAC.

44 C. “Air contaminant” or “contaminant” means a substance, including particulate matter, fly ash,
45 dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay
46 or reaction product thereof.

47 D. “Air pollutant” or “pollutant” means the emission, except emission that occurs in nature, into
48 the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable
49 probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare,
50 visibility or the reasonable use of property.

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

54 F. “Ambient air” means the outdoor atmosphere, but does not include the area entirely within the
55 geographical boundaries of the source from which the air contaminants are, or may be, emitted and where public
56 access is restricted within the boundaries.

1 **G. “Applicable requirement”** means any of the following, and includes requirements that have been
2 promulgated or approved by the board or EPA through rulemaking:

3 (1) any standard or other requirement provided in the New Mexico state implementation plan
4 approved by EPA, or promulgated by EPA through rulemaking, under Title I of the federal act, including Parts C or
5 D;

6 (2) any term or condition of a stationary source permit issued pursuant to regulations approved or
7 promulgated through rulemaking under Title I of the federal act, including Parts C or D;

8 (3) any standard or other requirement:

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

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

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

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

14 (e) of the regulations promulgated to protect stratospheric ozone under Title VI of the federal
15 act, unless the EPA administrator has determined that the requirements need not be contained in a Title V permit;

16 (4) any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act;

17 (5) any national or state ambient air quality standard;

18 (6) any increment or visibility requirement under Part C of Title I of the federal act applicable to
19 temporary sources permitted pursuant to Section 504(e) of the federal act; and

20 (7) any regulation adopted by the board in accordance with the Joint Air Quality Control Board
21 Ordinances pursuant to the Air Quality Control Act, and the laws and regulations in effect pursuant to the Air
22 Quality Control Act.

23 **H. “Board”** means the Albuquerque-Bernalillo county air quality control board or its successor board
24 pursuant to the act.

25 **I. “Commence”, “commencement” or “commencing”** means an owner or operator has undertaken
26 a continuous program of construction or modification or that an owner or operator has entered into a binding
27 contractual obligation to undertake and complete a continuous program of construction within a reasonable time.

28 **J. “Conflict of interest”** for the purposes of accelerated review, means any direct or indirect
29 relationship between the qualified outside firm and the applicant or other interested person that would cause a
30 reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the qualified
31 outside firm in review of the application. A conflict of interest does not include any gifts, gratuities, financial or
32 contractual relationship of less than one hundred dollars (\$100) in value for the 12 month period preceding
33 department receipt of the application. A conflict of interest includes but is not limited to the following examples:

34 (1) gifts or gratuities of value have been exchanged between the qualified outside firm and the
35 applicant;

36 (2) the qualified outside firm has provided goods or services to the applicant within one year prior to
37 the start, or during the term, of the accelerated review process;

38 (3) an express or implied contractual relationship exists between the qualified outside firm and the
39 applicant and the qualified outside firm has provided goods or services to the applicant through that relationship
40 within five years prior to the start of the accelerated review process;

41 (4) there is a current financial relationship between the qualified outside firm and the applicant.
42 Current financial relationships include, but are not limited to:

43 (a) the qualified outside firm owes anything of value to, or is owed anything of value by the
44 applicant; and

45 (b) the qualified outside firm has provided goods or services to the applicant and has issued a
46 warranty or guarantee for the work that is still in effect during the time the contracted work for accelerated review is
47 being performed;

48 (5) a director, officer, or employee of the qualified outside firm, who will perform services under a
49 contract pursuant to 20.11.41.32 NMAC, has one or more personal, business, or financial interests or relationships
50 with the applicant or any director, officer or employee of the applicant which would cause a reasonable person with
51 knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a
52 contract;

53 (6) a director, officer or employee of the qualified outside firm was a director, officer or employee of
54 the applicant within one year prior to the start of the accelerated review process;

55 (7) except where allowed by the department, communication has been made between the qualified
56 outside firm and the applicant regarding the substance of the application before a qualified outside firm has been

1 selected to perform accelerated review of an application; direct communication between the qualified outside firm
2 and the applicant may take place once the qualified outside firm has been selected by the department;

3 (8) any affiliate of the applicant has any of the above identified relationships with the qualified
4 outside firm;

5 (9) any affiliate of the qualified outside firm has any of the above identified relationships with the
6 applicant; and

7 (10) any affiliate of the applicant has any of the above identified relationships with any affiliate of the
8 qualified outside firm.

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

11 **L. "Days"** means consecutive days except as otherwise specifically provided.

12 **M. "Department"** means the Albuquerque environmental health department, which is the
13 administrative agency of the Albuquerque-Bernalillo county air quality control board.

14 **N. "Emergency"** means unforeseen circumstances resulting in an imminent and substantial
15 endangerment to health, safety, or welfare and that require immediate action.

16 **O. "Emission limitation"** means a requirement established by EPA, the state implementation plan
17 (SIP), the Air Quality Control Act, local ordinance, permit, or board part or regulation, that limits the quantity, rate
18 or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including
19 any requirements relating to the operation or maintenance of a source to assure continuous reduction.

20 **P. "Emission unit" or "unit"** means any article, machine, equipment, contrivance, process, or
21 process line which emits or reduces, or may emit or reduce, the emissions of any air contaminant, except from motor
22 vehicles.

23 **Q. "EPA"** means the United States environmental protection agency.

24 **R. "Federal clean air act", "CAA" or "federal act"** means the federal Clean Air Act, 42 U.S.C.
25 Section 7401 through 7671 et seq., as amended.

26 **S. "Federally enforceable"** means all limitations and conditions that are enforceable by the
27 administrator of the EPA, including all requirements developed pursuant to 40 CFR Parts 60 and 61, requirements
28 included in any applicable state implementation plan, and any permit requirements established pursuant to 40 CFR
29 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR
30 51.166.

31 **T "Malfunction"** means any sudden, infrequent, and not reasonably preventable failure of air
32 pollution control equipment or process equipment, or the failure of a process to operate in a normal or expected
33 manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

34 **U. "Modification" or "to modify"** means a physical change in, or change in the method of operation
35 of a source that results in an increase in the potential emission rate of any regulated air contaminant emitted by the
36 source or that results in the emission of any regulated air contaminant not previously emitted; a relocation of a
37 stationary source, unless previously established as a portable stationary source subject to specific permit conditions;
38 or a revision that involves substantive changes that exceed the scope of a revision as defined by 20.11.41.28 NMAC,
39 but does not include:

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

41 (2) routine maintenance, repair or replacement;

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

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

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

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

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

52 **V. "National ambient air quality standards" or "NAAQS"** means the primary (health based) and
53 secondary (welfare-related) federal ambient air quality standards promulgated by the EPA pursuant to Section 109
54 of the CAA.

1 **W.** “**National emission standards for hazardous air pollutants**” or “**NESHAP**” means the
2 regulatory requirements, guidelines and emission limitations promulgated by the EPA pursuant to Section 112 of the
3 CAA.

4 **X.** “**New Mexico ambient air quality standards**” or “**NMAAQs**” means the ambient air quality
5 standards promulgated by the New Mexico environmental improvement board.

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

8 **Z.** “**Nonattainment area**” means for any air contaminant an area that is shown by monitoring data or
9 that is calculated by air quality modeling, or by other methods determined by the director of the department or the
10 administrator of the EPA to be reliable to exceed either a state NMAAQs or NAAQS for the contaminant, including
11 but not limited to areas identified under Section 107 (d) (1) (A) through (C) of the CAA.

12 **AA.** “**North American industry classification system**” or “**NAICS**” means the industry classification
13 system used by the statistical agencies of the United States issued by the federal office of management and budget
14 and replaces the standard industrial classification (SIC) system.

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

17 **CC.** “**Owner**” means the person or persons who own a facility or part of a facility.

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

20 **EE.** “**Permit**” means a stationary source permit for source construction, a permit modification,
21 relocation, or administrative or technical permit revision that has been issued or approved by the department
22 pursuant to 20.11.41 NMAC. A permit includes constraints, emissions limitations and other conditions and
23 authorizes a person to commence construction, or to modify, relocate or make a technical revision to the permitted
24 source, facility or operation.

25 **FF.** “**Permittee**” means the person who has applied for and has obtained a stationary source permit for
26 a source that has been issued a permit pursuant to 20.11.41 NMAC.

27 **GG.** “**Portable stationary source**” means a source that can be relocated to another operating site with
28 limited dismantling and reassembly, including, as an example, movable sand and gravel processing operations,
29 concrete and asphalt plants.

30 **HH.** “**Potential emission rate**” means the emission rate of a source at its maximum capacity to emit a
31 regulated air contaminant under its physical and operational design, provided any physical or operational limitation
32 on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and
33 restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be
34 treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is
35 enforceable by the department or the board pursuant to the Air Quality Control Act or the federal Act.

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

40 **JJ.** “**Public information hearing**” or “**PIH**” means the hearing provided by the permit applicant
41 pursuant to 20.11.41.15 NMAC.

42 **KK.** “**Regulated air contaminant**” means any air contaminant, the emission or ambient concentration
43 of which is regulated pursuant to the New Mexico air quality control act or the federal act.

44 **LL.** “**Relocation**” means to physically move a portable stationary source.

45 **MM.** “**Shutdown**” means the cessation of operation of a stationary source, which involves deactivating
46 the air pollution controls and not activating the source to perform the purpose for which it was intended. Brief
47 interruptions of operation that are normal for the type of source that operates in cyclic rather than near-steady-state
48 mode are not considered a shutdown source for the purpose of 20.11.41 NMAC.

49 **NN.** “**Significant impact**” means to pollute to an extent that ambient contaminant concentrations,
50 including background, exceed any of the significance levels listed in Table 1 of 20.11.41.33 NMAC, as indicated by
51 modeling techniques authorized by the department.

52 **OO.** “**Standard industrial classification**” or “**SIC**” means the code from the system used to classify
53 all industries in the United States economy which was administered by the federal statistical policy division of the
54 office of management and budget and in 1997 was replaced by the North American industry classification system
55 (NAICS).

1 **PP. “Startup”** means to put a stationary source that has been constructed or modified as authorized by
2 a permit pursuant to 20.11.41 NMAC into operation complete with operable air pollution controls, so the process
3 equipment or the process performs for the purpose intended. The operation may be cyclic in response to on-off
4 controls. Repetition of cycles is not startup for purposes of 20.11.41 NMAC.

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

13 **RR. “Technical permit revision” or “technical revision”** means a revision to a stationary source
14 permit pursuant to Subsection B of 20.11.41.28 NMAC.
15 [20.11.41.7 NMAC – Rp, 20.11.41.7 NMAC, 1/15/09]
16

17 **20.11.41.8 VARIANCES:** A person may request a variance from 20.11.41 NMAC in accordance with the
18 procedures established in 20.11.7 NMAC, *Variance Procedure*.
19 [20.11.41.8 NMAC – Rp, 20.11.41.8 NMAC, 1/15/09]
20

21 **20.11.41.9 SAVINGS CLAUSE:** Any amendment to 20.11.41 NMAC that is filed with the state records
22 center and archives shall not affect actions pending for violation of the air quality control act, a city or county
23 ordinance, a prior version of 20.11.41 NMAC, another board regulation or a permit issued by the department.
24 Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute,
25 ordinance, part or regulation section in effect at the time the violation was committed.
26 [20.11.41.9 NMAC – Rp, 20.11.41.9 NMAC, 1/15/09]
27

28 **20.11.41.10 SEVERABILITY:** If for any reason any section, paragraph, sentence, clause, wording or
29 application of 20.11.41 NMAC or any federal or New Mexico standards incorporated herein is held unconstitutional
30 or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect
31 the validity or application of remaining provisions of 20.11.41 NMAC.
32 [20.11.41.10 NMAC – Rp, 20.11.41.10 NMAC, 1/15/09]
33

34 **20.11.41.11 DOCUMENTS:** Documents incorporated and cited in 20.11.41 NMAC may be viewed at the
35 Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM 87102. The permit
36 application, supporting documentation, any preliminary determination made by the department, and the draft permit,
37 if completed, shall be available for public inspection at the department’s air quality division office at 11850 Sunset
38 Gardens SW, Albuquerque, New Mexico 87121.
39 [20.11.41.11 NMAC – Rp, 20.11.41.11 NMAC, 1/15/09]
40

41 **20.11.41.12 FEES FOR PERMIT APPLICATION REVIEW:**
42 **A.** An application for a permit shall be accompanied by a check or money order in the amount
43 required by 20.11.2 NMAC, *Fees*. No application shall be complete until the entire fee has been tendered. Checks
44 shall be made payable to the city of Albuquerque as required by 20.11.2 NMAC, *Fees*.
45 [20.11.41.12 NMAC – Rp, 20.11.41.12 NMAC, 1/15/09]
46

47 **20.11.41.13 APPLICATION FOR PERMIT:**
48 **A. Pre-application requirements:** A person who is seeking a permit pursuant to 20.11.41 NMAC
49 shall contact the department in writing and request a pre-application meeting or information regarding the contents
50 of the application and the application process. The meeting shall include discussion of approved emission factors
51 and control efficiencies, air dispersion modeling guidelines, department policies, air quality permit fees, public
52 notice requirements and regulatory timelines. The department may waive the pre-application meeting requirement.
53 **B.** A person who is seeking a permit pursuant to 20.11.41 NMAC shall complete a permit application
54 and file one complete original and one duplicate copy with the department.
55 **C. Application contents:** The following are the minimum elements that shall be included in the
56 permit application before the department can determine whether the application is administratively complete and

1 ready for technical review. It is not necessary to include an element if the department has issued a written waiver
2 regarding the element and the waiver accompanies the application. The permit application shall include:

- 3 (1) a completed permit application form provided by the department;
- 4 (2) the name and address of the applicant and the names and address of the owner and all operators of
5 the source if different than the applicant;
- 6 (3) the date the application was submitted to the department;
- 7 (4) sufficient attachments, including calculations, computations, EPA-approved air dispersion model
8 or models executed under a protocol that has been approved in advance and in writing by the department, and all
9 other analyses used by the applicant to providing information to describe the potential emission rate and nature of all
10 regulated air contaminants that the source may emit, and the actual emissions that the source will emit under routine
11 operations after construction, modification, relocation or technical revision, along with estimates of potential
12 emissions during malfunction, startup and shutdown;
- 13 (5) an operational and maintenance strategy detailing:
 - 14 (a) the steps the applicant will take if a malfunction occurs that may cause emission of a
15 regulated air contaminant to exceed a limit that is included in the permit;
 - 16 (b) the nature of emissions during routine startup or shutdown of the source and the source's
17 air pollution control equipment; and
 - 18 (c) the steps the applicant will take to minimize emissions during routine startup or shutdown;
- 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
22 the proposed construction, modification, relocation or technical revision of the source;
- 23 (7) an aerial photograph showing the proposed location of each process equipment unit involved in
24 the proposed construction, modification, relocation or technical revision of the source;
- 25 (8) a complete description of all sources of regulated air contaminants and a process flow diagram
26 depicting the process equipment unit or units at the facility, both existing and proposed, that are proposed to be
27 involved in routine operations and from which regulated air contaminant emissions are expected to be emitted;
- 28 (9) a full description of air pollution control equipment, including all calculations and the basis for all
29 control efficiencies presented, manufacturer's specifications sheets, and site layout and assembly drawings. UTM
30 (universal transverse mercator) coordinates shall be used to identify the location of each emission unit;
- 31 (10) a description of the equipment or methods proposed by the applicant to be used for emission
32 measurement;
- 33 (11) the maximum and normal operating time schedules of the source after completion of
34 construction, modification, relocation or technical revision;
- 35 (12) any other relevant information as the department may reasonably require;
- 36 (13) the signature of the applicant, operator, owner or an authorized representative, certifying to the
37 accuracy of all information as represented in the application and attachments, if any;
- 38 (14) a check or money order for the appropriate application fee or fees required by 20.11.2 NMAC,
39 *Fees*. The fees are established to offset some or all of the reasonable cost of the department reviewing and acting
40 upon an application for a permit and implementing and enforcing the terms and conditions of the permit, excluding
41 costs associated with an enforcement action; and
- 42 (15) documentary proof that applicant has complied with all public notice requirements, as required
43 by Subsections D and E of 20.11.41.13 NMAC. Documentary proof shall include the proof of publication of the
44 public notice required by Paragraph (3) of Subsection D of 20.11.41.13 NMAC and a photograph of each notice
45 posted as required by Paragraph (4) of Subsection D of 20.11.41.13 NMAC.

46 **D. Applicant's public notice requirements:** The applicant shall comply with the following public
47 notice requirements of Paragraphs (1) through (5) of Subsection D of 20.11.41.13 NMAC if the applicant is
48 applying for a permit or permit modification, and shall comply with the notice requirements if required by the
49 department regarding a portable stationary source relocation. The applicant shall:

- 50 (1) provide public notice by certified mail to every recognized neighborhood association with a
51 boundary that is within one-quarter mile of the center of the proposed location; the public notice shall be mailed to
52 the two designated neighborhood association representatives on file at the city of Albuquerque office of
53 neighborhood coordination for areas within the Albuquerque city limits and the Bernalillo county zoning, building
54 and planning department for unincorporated areas of Bernalillo county;

1 (2) provide public notice by certified mail to the owners of record, as shown in the most recent
2 property tax schedule, of all properties within 200 feet of the boundaries of the property on which the facility is
3 located or proposed to be located or within one-quarter of a mile of the source;

4 (3) provide public notice by certified mail to the Bernalillo county manager; to the mayor of all
5 municipal corporations and counties within a two-mile radius of the center of the property upon which the facility is
6 or is proposed to be located; to the city of Albuquerque councilors and Bernalillo county commissioners of the
7 districts within which the facility is or is proposed to be located; and to all Indian pueblos, Indian reservations and
8 counties within a two-mile radius of the center of the property on which the facility is or is proposed to be located;

9 (4) publish public notice once in the newspaper of the largest general circulation in Bernalillo county.
10 The notice shall be located in the legal notice section of the newspaper and at one additional location in the
11 newspaper that is calculated to provide effective notice to the general public. The notice in the additional location
12 shall be at least 96.8 square centimeters (15 square inches), with the shortest dimension at least 7.6 centimeters
13 (three inches). The department may require the notice to be published in a language in addition to English.

14 (5) until the department makes a final decision regarding the application, post and maintain the public
15 notice at a minimum of four publicly-accessible and conspicuous locations, including:

16 (a) a weather-proof sign meeting the minimum size as determined by the department, posted at
17 the more visible of either the proposed or existing facility entrance or another location on the property boundary;
18 and

19 (b) three additional locations commonly frequented by the general public in the vicinity of the
20 proposed or existing facility, such as city hall, a nearby post office, public library, community center, senior center
21 or institution of learning.

22 **E. Additional public notice requirements:** The public notice specified in Paragraphs (1) through
23 (5) of Subsection D of 20.11.41.13 NMAC shall include the following:

24 (1) the applicant's name and address, and the names and addresses of owner or operator of the facility
25 or proposed facility;

26 (2) the actual or estimated date the application will be submitted to the department;

27 (3) the exact location of the facility or proposed facility;

28 (4) a description of the facility, the nature of business, the process or change for which the permit is
29 being requested, including an estimate of the maximum quantities of each regulated air contaminant the source will
30 emit if the permit is issued and the proposed construction or modification is completed;

31 (5) the maximum and standard normal operating schedules proposed for the facility; and

32 (6) the current address of the applicant to which comments and inquiries may be directed.

33 **F. Changing, Supplementing or Correcting Applications:**

34 (1) Before the department makes a final decision regarding the application, the applicant shall have a
35 duty to promptly supplement and correct information the applicant has submitted in the application to the
36 department. Applicant's duty to supplement and correct the application includes relevant information acquired after
37 the applicant has submitted the application and additional information the applicant otherwise determines is relevant
38 to the application and the department's review and decision.

39 (2) While the department is processing an application, regardless of whether the department has
40 determined the application is administratively complete, if the department determines additional information is
41 necessary to evaluate or make a final decision regarding the application, the department may request, and the
42 applicant shall provide the requested additional information. The request shall be in writing, identify the additional
43 information requested, the reason the additional information is needed, and set a reasonable deadline for a response.
44 The applicant shall submit the requested information in writing to the department on or before the response deadline.

45 **G. Protection of confidential information:**

46 (1) All records, reports or information relating to permit applications obtained by the department or
47 the board from any person shall be available to the public for inspection and copying, except if a person has made a
48 satisfactory showing to the department or the board that specific items or information or parts thereof, if made
49 public, would divulge confidential business records or methods or processes entitled to protection as trade secrets. If
50 the items or information are specifically marked by the person as confidential at the time of submittal, the
51 department or the board shall then protect the following as confidential and not to be made a part of any public
52 record unless the person expressly agrees, in writing, to its inspection, copying, or publication:

53 (a) records, reports or information relating to methods, processes or production techniques
54 unique to the person, and

55 (b) data relating to the person's profits and costs or other confidential business information
56 which have not previously been released to the public.

1 (2) Subsection G of 20.11.41.13 NMAC shall not be construed to prohibit the release of information
2 concerning the nature and amount of emissions from any source.

3 (3) The department shall review all claims of confidentiality made by any person pursuant to
4 20.11.41 NMAC and shall notify the person by certified mail in a timely manner with the reasons for its decision.
5 The burden of proof for claims of confidentiality shall be upon the person submitting such claim.

6 (4) The department's determination regarding claims made pursuant to Subsection G of 20.11.41.13
7 NMAC shall be the final administrative determination.

8 (5) The department shall protect information claimed and subsequently found to be confidential in
9 accordance with the provisions of 74-2-1 NMSA 1978 and 18 U.S.C. Section 1905, except that any such record,
10 report or information may be disclosed:

11 (a) to other officers, employees or authorized representatives of the department, the board and
12 the EPA; or

13 (b) in any proceeding pursuant to the federal act or the state act, when relevant.

14 [20.11.41.13 NMAC – Rp, 20.11.41.13 NMAC, 1/15/09]

15
16 **20.11.41.14 PUBLIC NOTICE BY DEPARTMENT -- PUBLIC PARTICIPATION:**

17 A. The department shall make a list of all pending applications for permits available for public
18 inspection.

19 B. The department shall make the permit application and all supporting documentation available for
20 public inspection. The application, supporting documentation, any preliminary determination made by the
21 department, and the draft permit, if completed, shall be available for public inspection at the department's air quality
22 division office at 11850 Sunset Gardens SW, Albuquerque, New Mexico 87121.

23 C. If the department makes an affirmative administrative completeness determination:

24 (1) the department shall publish the public notice in the newspaper with the largest general circulation
25 in Bernalillo county. The notice shall include:

26 (a) the applicant's name and address, the proposed or existing location, a brief description of
27 the source, a summary of proposed emissions and ambient air quality impact as determined by air dispersion
28 modeling, and that the department will issue the permit if the department determines the construction or
29 modification requested in the application complies with all requirements of 20.11.41 NMAC, including ambient air
30 quality standards.

31 (b) where the permit application, the department's analysis, and a draft permit, if completed,
32 are available for public review.

33 (c) that the public has 30 days to submit written comments and evidence to the department
34 regarding the proposed permit, and the deadline for submitting written comments and evidence.

35 (d) that the applicant shall hold a public information hearing if the director determines there is
36 significant public interest and a significant air quality issue is involved; and

37 (e) that any person who does not submit written comments and evidence to the department by
38 the deadline will not receive notification of the department's decision regarding the proposed permit.

39 (2) the department shall provide the notice required by Paragraph (1) of Subsection C of 20.11.41.14
40 NMAC by regular mail or electronic mail to all individuals and organizations identified on a list maintained by the
41 department of persons who have stated in writing a desire to receive notices of all applications filed pursuant to
42 20.11.41 NMAC.

43 (3) the department shall allow all interested persons 30 days from the date the public notice is
44 published to deliver to the department written comment and evidence regarding the application for a permit;

45 (4) the department shall send notice of the department's action regarding the permit application and
46 the reasons for the action to every person who participated in the permitting action. The applicant shall be notified
47 by certified mail. All other interested persons who participated shall be notified by regular mail or electronic mail;

48 (5) the department shall provide a copy of the public notice to the mayor of each municipality within
49 Bernalillo county, the Bernalillo county manager, every Albuquerque city councilor whose district is within one-
50 quarter mile of the center of the proposed location, every Bernalillo county commissioner whose district is within
51 one-quarter mile of the center of the proposed location, and to the two designated neighborhood association
52 representatives on file at the city of Albuquerque office of neighborhood coordination for areas within the
53 Albuquerque city limits and the Bernalillo county zoning, building and planning department for unincorporated
54 areas of Bernalillo county, for every neighborhood association with a boundary that is within one-quarter mile of the
55 center of the proposed location when the department submits the public notice for publication; and

1 (6) the department shall mail a copy of the public notice by regular or electronic mail to every person
2 who submits a written request for a copy to the department.
3 [20.11.41.14 NMAC – Rp, 20.11.41.14 NMAC, 1/15/09]
4

5 **20.11.41.15 PUBLIC INFORMATION HEARING:**

6 A. Before the department makes a final decision regarding the application, the department shall hold
7 a public information hearing if the director determines that there is significant public interest and a significant air
8 quality issue is involved. The department shall make all arrangements regarding the public information hearing.
9 The department shall pay all expenses of the hearing and provide and pay for notice of the public information
10 hearing. The public information hearing shall be held more than 30 days before the deadline for the department to
11 make a final decision regarding the permit application.

12 B. The department shall:

13 (1) arrange for a location for the public information hearing which shall be near the proposed facility
14 location if feasible;

15 (2) provide an English-Spanish and Spanish-English translator at the public information hearing if
16 determined necessary by the department;

17 (3) provide a hearing officer; the hearing officer shall run the public information hearing; shall give
18 all people present at the hearing a reasonable opportunity to submit data, views or arguments orally or in writing and
19 to examine witnesses testifying at the hearing; and shall not make a final decision regarding the permit application;

20 (4) arrange for the applicant to present the applicant's proposal and to answer questions from
21 attendees at the public information hearing;

22 (5) provide notice to the president of each neighborhood association in the city of Albuquerque and
23 county of Bernalillo that is within one-quarter mile of the center of the property on which the facility is located or
24 proposed to be located, no fewer than 10 days before the public information hearing; the notice shall contain the
25 information required by Paragraphs (1) and (3)-(5) of Subsection E of 20.11.41.13 NMAC, and the name of the
26 contact person, the department and the address to which comments and inquiries may be directed. The notice of the
27 public information hearing shall be in both English and Spanish. If a public information hearing notice is returned
28 to the department undelivered, the department shall promptly confirm the address through the appropriate local
29 government entity, and, if possible, shall deliver a second copy of applicant's PIH notice to the president or vice
30 president of the neighborhood association.

31 (6) publish and post notice of the public information hearing as required by Paragraphs (3) and (4) of
32 Subsection D of 20.11.41.13 NMAC no fewer than 10 days before the public information hearing,. In addition, the
33 notice shall include the date, time, and location of the PIH, the number of the proposed permit, and a statement that a
34 final decision has not been made by the department regarding the proposed permit.

35 (7) mail notice of the public information hearing to all interested persons who have submitted written comments
36 or evidence to the department and to interested persons who have delivered to the department a written request for
37 notice regarding the application. A request to inspect or copy shall not be considered a written comment for the
38 purposes of this paragraph;

39 (8) require department staff to attend the PIH and be present during the applicant's presentation and
40 the questions by the attendees; and

41 (9) record the PIH and include the recording in the administrative record for the permit application.
42 The department shall provide a duplicate of the tapes to any person who requests a copy. The person requesting
43 shall reimburse the department for the cost of the duplicate tapes before the department makes the copies. The
44 person making the request for copying may instead provide the department with wrapped, new tapes that meet the
45 department specifications, and the department will not impose a charge for copying. If a transcript of the hearing is
46 requested, the department shall arrange for a transcription to be made, and the cost of the transcript shall be paid
47 promptly by the person who requested the transcript.

48 [20.11.41.15 NMAC – Rp, 20.11.41.15 NMAC, 1/15/09]
49

50 **20.11.41.16 PERMIT DECISIONS AND APPEALS:**

51 A. Within 30 days after the department has received an application for a permit, the department shall
52 review the application and determine whether it is administratively complete.

53 (1) If the department determines the application is administratively complete, the department shall
54 send a letter by certified mail to the applicant stating the department's determination.

55 (2) If the department determines the application is administratively incomplete, the department shall
56 send a letter by certified mail to the applicant stating what additional information or points of clarification are

1 necessary before the department can determine whether the application is administratively complete. A department
2 request for information shall be for information that is necessary for the department to perform a thorough review of
3 the application and to take final action on the application and may include technical clarifications, emission
4 calculations, emission factor usage and replacement of air dispersion modeling. The letter shall state a reasonable
5 deadline for the applicant to deliver the information or clarification. The applicant shall deliver the requested
6 information or clarification in writing by the deadline set by the department. The department may extend the
7 deadline for good cause as determined by the department. If the department does not receive the additional
8 information or clarification by the deadline, the department may deny the application. If the department has ruled an
9 application administratively incomplete three times, the department shall send a letter by certified mail to the
10 applicant stating the permit application is denied. If the department has denied the application, the applicant may
11 submit a new application and the fee required for a new application.

12 (3) If the department determines the application is administratively complete but no permit is
13 required, the department shall send a letter by certified mail to the applicant informing the applicant of the
14 determination.

15 B. If the application is not subject to the requirements of 20.11.60 NMAC, *Permitting in*
16 *Nonattainment Areas*, or 20.11.61 NMAC, *Prevention of Significant Deterioration*, then within 90 days after the
17 department has determined the application is administratively complete, the department shall grant, grant subject to
18 conditions or deny the permit, unless the director grants an extension for not more than 90 days for good cause,
19 including the need to hold a public information hearing.

20 C. If the department fails to take action on the application within the deadlines specified in
21 Subsection B of 20.11.41.16 NMAC, the department shall notify the applicant by certified mail that an extension of
22 time is required to process the application. The notification shall specify in detail the grounds for the extension.

23 D. The department shall grant, grant subject to conditions or deny the requested permit or permit
24 modification based on information contained in the department's administrative record of the permit application.
25 The administrative record shall consist of the application, any other evidence submitted by the applicant, any
26 evidence or written comments submitted by interested persons, any other evidence considered by the department, a
27 statement of matters officially noticed, and, if a public information hearing has been held, the evidence submitted at
28 the hearing. The applicant has the burden of demonstrating that a permit or permit modification should be approved.

29 E. A person who participated in a permitting action before the department shall be notified by the
30 department of the action taken and the reasons for the action. A request to inspect or copy information contained in
31 the department's administrative record of the permit application is not participation for purposes of Subsection E of
32 20.11.41.16 NMAC. The department shall notify the applicant by certified mail as required by the state act. The
33 department shall notify all other participating persons by regular mail sent to the legible address the participating
34 person has provided to the department. Notification by mail shall be deemed complete and received three days after
35 mailing postage paid to the participating person's address provided to the department.

36 F. A person who participated in a permitting action before the department and who is adversely
37 affected by the permitting action may file a petition for hearing before the board. The petition shall be in writing
38 and shall be delivered to the board within 30 days from the date notice is given of the department's action. The
39 petition shall conform to the requirements of Subsection B of 20.11.81.14 NMAC. The petitioner shall certify that a
40 copy of the petition has been mailed or hand delivered to the applicant if the petitioner is not the applicant. A
41 hearing before the board shall be conducted as required by 20.11.81 NMAC. Unless a timely request for a hearing is
42 made, the decision of the department shall be final.

43 G. If a timely request for a hearing is made, the local board shall hold a hearing within 60 days of
44 receipt of the petition as required by the state act at Subsection I of 74-2-7 NMSA 1978.

45 H. Any person adversely affected by an administrative action taken by the board may appeal in
46 accordance with the state act at 74-2-9 NMSA 1978.

47 [20.11.41.16 NMAC – Rp, 20.11.41.16 NMAC, 1/15/09]

48
49 **20.11.41.17 BASIS FOR PERMIT DENIAL:** After the department has determined a permit application is
50 administratively complete, the department may deny the application if:

51 A. the department determines the proposed construction, modification or technical revision will not
52 meet applicable standards, rules, regulations, provisions or requirements of the federal act, the state act or a board
53 regulation;

54 B. the department determines the source will cause or contribute to air contaminant levels in excess
55 of a national or New Mexico state ambient air quality standard;

- 1 C. the source will emit a hazardous air pollutant for which no NESHAP applies, if the HAP is
 2 emitted in a quantity and duration that may cause imminent danger to public health;
- 3 D. the department determines the construction, modification, or technical revision would cause or
 4 contribute to ambient concentrations in excess of a prevention of significant deterioration (PSD) increment;
- 5 E. the department concludes that construction of a proposed new or modified source cannot or will
 6 not be completed within a reasonable time;
- 7 F. the department determines a conflict of interest exists regarding an application that was submitted
 8 during accelerated review, as provided by 20.11.41.32 NMAC;
- 9 G. the emission data that was submitted by the applicant as part of the application is not acceptable to
 10 the department for technical reasons;
- 11 H. the estimated emissions of air contaminants submitted by the applicant have not been
 12 appropriately identified or quantified;
- 13 I. the issuance of a permit, permit modification or technical revision will not be consistent with
 14 achieving progress toward attainment of the state ambient air quality standard that is being exceeded; or
- 15 J. the department has delivered three written notices requiring the applicant to provide specified
 16 information the department needs in order to take final action on the application and the applicant either has not
 17 provided the information by the deadline stated in the related notification or the applicant has submitted information
 18 that the department has determined to be technically unacceptable. The department may agree in writing to extend
 19 the deadline. A department request for information shall be for information that is necessary for the department to
 20 perform a thorough review of the application and to take final action on the application and may include technical
 21 clarifications, emission calculations, emission factor usage and replacement of air dispersion modeling.
 22 [20.11.41.17 NMAC – Rp, 20.11.41.17 NMAC, 1/15/09]

23
 24 **20.11.41.18 APPLICANTS’ ADDITIONAL LEGAL RESPONSIBILITIES:** The issuance of a permit
 25 does not relieve any person from responsibility for complying with applicable provisions of the federal act, the state
 26 act or any applicable regulation of the board.
 27 [20.11.41.18 NMAC – Rp, 20.11.41.18 NMAC, 1/15/09]

28
 29 **20.11.41.19 PERMIT CONDITIONS:**

- 30 A. The contents of the application specifically identified by the department shall become terms and
 31 conditions of the permit, permit modification or permit revision.
- 32 B. The department shall specify conditions upon a permit as the department determines to be
 33 appropriate, including:
- 34 (1) placement of individual emission limits on the source for which the permit is issued, as
 35 determined on a case-by-case basis, but the individual emission limits shall be only as restrictive as the more
 36 stringent of the following:
- 37 (a) the extent necessary to meet the requirements of the federal act, state act or board
 38 regulations; or
- 39 (b) the emission rate specified in the permit application;
- 40 (2) a requirement that the source install and operate control technology, determined on a case-by-case
 41 basis, sufficient to meet the requirements of the federal act, state act or board regulations;
- 42 (3) compliance with applicable NSPS and NESHAP;
- 43 (4) imposition of reasonable restrictions and limitations other than restrictions and limitations relating
 44 to emission limits or emission rates, including throughput limitations, hours of operation, and unpaved haul road
 45 speed limits;
- 46 (5) any combination of the above; and
- 47 (6) in the case of a modification, the requirements of Subsection B of 20.11.41.19 NMAC apply only
 48 to the emission units involved in the modification.
- 49 C. The department may impose additional conditions in order to meet requirements of the federal act,
 50 state act, or a board regulation including:
- 51 (1) a schedule of construction;
- 52 (2) a condition requiring timely revision of permit terms or conditions;
- 53 (3) sampling ports of a size, number and location as the department may require;
- 54 (4) safe access to each port;
- 55 (5) instrumentation to monitor and record emission data including continuous emission monitoring;

- 1 (6) any other reasonable sampling, testing and ambient monitoring and meteorological facilities and
2 protocols;
3 (7) periodic testing pursuant to 20.11.41.22 NMAC, *Performance Testing Following Startup*
4 (8) periodic reports;
5 (9) performance of air pollution control equipment; and
6 (10) monitoring, recordkeeping and reporting for hours of operation, throughput, capacity and other
7 parametric information.

8 **D.** Every term or condition imposed by the department on a permit is enforceable to the same extent
9 as a regulation of the board.

10 **E.** All permits issued pursuant to 20.11.41 NMAC after the January 15, 2009 effective date of
11 20.11.41 NMAC shall be valid for no longer than 10 years. Applications for a permit renewal shall be submitted to
12 the department, with the required fee, one year before the permit expiration date.
13 [20.11.41.19 NMAC – Rp, 20.11.41.19 NMAC, 1/15/09]
14

15 **20.11.41.20 PERMIT SUSPENSION OR REVOCATION:**

16 **A.** The department may suspend or revoke a permit if:
17 (1) the construction of a new stationary source or modification of a stationary source has not
18 commenced within one year from the date the permit was issued;
19 (2) during construction or modification, work is suspended for a total of one year or more;
20 (3) any permitted source has temporarily ceased operation for five years or more or permanently
21 ceased operations; or
22 (4) the director determines based on any credible evidence that a person has violated or is violating a
23 requirement or prohibition of the federal act, the state act, board regulation or a condition of a permit issued pursuant
24 to 20.11.41 NMAC.

25 **B.** If a permit has been revoked for any reason included in Paragraphs (1) – (4) of Subsection A of
26 20.11.41.20 NMAC, a new application for a permit shall be submitted to the department if the applicant wishes to
27 resume operation.

28 **C.** No fewer than 30 days before a permit suspension or revocation becomes effective, the department
29 shall notify the permittee of the proposed action by certified mail or personal service. The notification shall include
30 the date by which the permittee may either respond in writing to the department or make a written request for a
31 public hearing before the board. The permittee's request for a hearing before the board shall be delivered to the
32 board no fewer than 30 days after the permittee has received the notice of suspension or revocation. The permittee's
33 response to the department or request for a board hearing shall state the reasons the permit should remain active. If
34 the permittee does not deliver a written response to the department or a hearing request to the board by the required
35 date, the suspension or revocation shall be final and the department shall issue a final notice of suspension or
36 revocation and send the final notice to the permittee by certified mail or personal service. The final notice shall state
37 the date the permit suspension or revocation is effective. The permittee shall cease all construction and operation of
38 the source no later than the date of permit suspension or revocation that is stated in the final notice.

39 **D.** If a timely request for public hearing is received by the board, the board shall hold the hearing
40 within 60 days after receipt of the request. The board staff shall notify the permittee by certified mail of the date,
41 time and place of the hearing. The burden of proof shall be upon the permittee at the hearing. The board may
42 designate a hearing officer to take evidence in the hearing and may direct the hearing officer to provide proposed
43 findings of fact, conclusions of law, a recommended decision with reasons for the recommendation, and a proposed
44 final order. Based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action
45 of the department.

46 [20.11.41.20 NMAC – Rp, 20.11.41.20 NMAC, 1/15/09]
47

48 **20.11.41.21 PERMITTEE'S OBLIGATIONS TO INFORM THE DEPARTMENT:** After a permit is
49 issued pursuant to 20.11.41 NMAC, the permittee shall inform the department by letter, facsimile or electronic mail
50 of:

51 **A.** the date of anticipated initial startup of the source no fewer than 30 days before the anticipated
52 initial startup date;

53 **B.** the date of anticipated initial startup of a portable stationary source no fewer than two days before
54 the anticipated initial startup date;

55 **C.** the date of actual initial startup of the source or portable stationary source no more than 15 days
56 after actual startup has occurred;

- 1 D. the date a portable stationary source leaves and returns to Bernalillo county;
2 E. any change of ownership, operator or permittee no more than 15 days after the change has
3 occurred; and
4 F. any permit update or correction as required by 20.11.41 NMAC no more than 60 days after the
5 permittee knows or should have known about the condition that requires updating or correction of the permit.
6 [20.11.41.21 NMAC – Rp, 20.11.41.21 NMAC, 1/15/09]
7

8 **20.11.41.22 NMAC PERFORMANCE TESTING:**

9 A. Within 60 days after achieving the maximum production rate at which a source will be operated,
10 but not more than 180 days after initial startup of the source, the department may require the permittee to conduct an
11 initial performance test. The permittee shall notify the department no fewer than 30 days before the test date by
12 submitting a testing protocol, including test methods, to the department for pre-approval and shall allow a
13 representative of the department to be present at the test. Whenever the requirements of 40 CFR 60, 61 or 63 apply,
14 the test methods specified in the code of federal regulations shall be used. No more than 30 days after the test is
15 completed, the permittee shall deliver a written report of the test results to the department.

16 B. The department may require the permittee to perform initial testing or additional testing if the
17 department determines that:

- 18 (1) an inspection of the source indicates noncompliance with any regulation or permit condition;
19 (2) previous testing indicated noncompliance with emission limits established by the permit; or
20 (3) the test was technically unsatisfactory.

21 C. The permittee shall conduct performance testing as frequently as the department requires to
22 determine that the source being tested demonstrates compliance with the permit. The department may waive testing;
23 reduce testing frequency; extend testing deadlines; or authorize performance testing at less than 90% of the
24 maximum production rate, rated capacity, or permitted rate if requested in writing by the permittee to the department
25 no fewer than 60 days before the test. The department shall review all requests and notify the permittee of its
26 decision in writing no fewer than 30 days before the performance test. The department's determination shall be final.
27 [20.11.41.22 NMAC – Rp, 20.11.41.22 NMAC, 1/15/09]
28

29 **20.11.41.23 TEMPORARY RELOCATION OF PORTABLE STATIONARY SOURCES:**

30 A. The permittee of a portable stationary source previously included in a permit issued pursuant to
31 20.11.41 NMAC may submit a written request to the department seeking approval to temporarily relocate and
32 operate the portable stationary source at a proposed location. Temporary relocations shall not exceed a total of 365
33 consecutive days.

34 B. The permittee of a portable stationary source shall not construct or operate at the new location
35 until the department approves the relocation request in writing.

36 C. The permittee of a portable stationary source that has been issued a permit pursuant to 20.11.41
37 NMAC shall submit a relocation application no fewer than 45 days before the date the permittee proposes to
38 commence operations at a new location within Bernalillo county. The permittee shall operate the portable stationary
39 source at the proposed new location in a manner that is consistent with the permit conditions unless the department
40 approves or imposes additional or more restrictive operational requirements or conditions. The relocation
41 application shall:

- 42 (1) be submitted on forms provided by the department;
43 (2) include an equipment list that shall include make, model, manufacture date, serial number and
44 rated capacity; production rates, and emissions estimates for each process unit;
45 (3) include a description of all stationary sources that have an air quality source registration or permit,
46 and all residences, offices, schools, community centers and medical facilities that are located within one-quarter of a
47 mile from the center of the property of the proposed new location;
48 (4) include an EPA-approved air dispersion model executed for the proposed new location that
49 demonstrates compliance with the NAAQS and the NMAAQs; the modeling protocol shall comply with the
50 requirements of Paragraph (4) of Subsection C of 20.11.41.13 NMAC unless waived in writing by the department;
51 (5) include all information required by 20.11.41.13 NMAC determined to be relevant by the
52 department and all additional information the department reasonably requires; and
53 (6) be signed by the operator, owner or an authorized representative certifying to the accuracy of all
54 information as represented in the application and any attachments.

55 D. The permittee shall comply with the public notice requirements imposed by the department. In
56 determining whether to require public notice, the department may take into consideration the proposed duration of

1 operation, the proposed location, the nature and amount of emissions, anticipated public concerns and other relevant
2 factors.

3 E. The department may require the permittee to hold a public information hearing for good cause.

4 F. The department may deny the request to relocate the portable stationary source if the relocation
5 application does not include all information required by Subsection C of 20.11.41.23 NMAC, or if the relocation
6 application is submitted to the department fewer than 45 days before the proposed relocation date.

7 G. The department shall not approve the relocation if the department determines the relocation will
8 result in an exceedance of any NAAQS or NMAAQs at the proposed new location.

9 H. No more than 45 days after the department receives the relocation application, the department
10 shall approve, deny or approve the relocation with conditions, or require that the permittee hold a public information
11 hearing regarding the relocation request.

12 I. If the stationary source has been issued a permit pursuant to a board regulation but has not been
13 designated in the permit as a portable stationary source, and the source wishes to relocate within Bernalillo county or
14 be classified as a portable stationary source, the request to relocate the source shall be treated as a proposed permit
15 modification and the permittee shall comply with the requirements of 20.11.41.29 NMAC.

16 [20.11.41.23 NMAC – Rp, 20.11.41.23 NMAC, 1/15/09]

17
18 **20.11.41.24 EMERGENCY PERMITS:**

19 A. The department may issue an emergency permit when the director determines an emergency
20 situation exist that threatens public health, safety or welfare, and that a source subject to 20.11.41 NMAC should be
21 immediately constructed, modified or relocated in order to mitigate, prevent or remedy the emergency.

22 B. In order to prevent worsening an emergency situation, department personnel shall evaluate the
23 emissions from the source to determine what conditions shall be included in the emergency permit.

24 C. If a person commits a negligent or unlawful act, including failing to apply in a timely manner for a
25 permit, permit modification, relocation or technical revision, or if a source is operated in a negligent or unlawful
26 manner, then the act, failure to act or operation shall not qualify as an emergency for the purposes of 20.11.41.24
27 NMAC.

28 D. The following requirements shall not apply to emergency permits processed pursuant to
29 20.11.41.24 NMAC: Subsection D of 20.11.41.13 NMAC; Subsection C of 20.11.41.14 NMAC; 20.11.41.15
30 NMAC; and Subsections A and B of 20.11.41.16 NMAC.

31 E. If required by the department, the permittee shall not commence emergency construction,
32 modification or relocation until the department has issued an emergency permit.

33 [20.11.41.24 NMAC – Rp, 20.11.41.24 NMAC, 1/15/09]

34
35 **20.11.41.25 NONATTAINMENT AREA REQUIREMENTS:**

36 **A. Applicability:**

37 (1) a new source or modification of an existing source that will emit a regulated air contaminant that
38 will cause an ambient impact of the contaminant in excess of a significant ambient concentration included in
39 20.11.41.33 NMAC, *Significant Ambient Concentrations*, Table 1, at a location that does not meet the standards
40 incorporated in 20.11.8 NMAC, *Ambient Air Quality Standards*, for that contaminant;

41 (2) a new source or modification of an existing source that is not a major stationary source or major
42 modification as defined in 20.11.60 NMAC, *Permitting in Nonattainment Areas*, and will emit a regulated air
43 contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration
44 incorporated in 20.11.41.33 NMAC, *Significant Ambient Concentrations*, Table 1, at a location that does not meet
45 the NAAQS for that contaminant; and

46 (3) an existing source that does not propose an increase in emissions but will emit a regulated air
47 contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration
48 included in 20.11.41.33 NMAC, *Significant Ambient Concentrations*, Table 1, at any location that does not meet the
49 20.11.8 NMAC standards for that contaminant.

50 B. A new source or modification of an existing source subject to 20.11.41.25 NMAC shall offset the
51 ambient impact of its emissions by:

52 (1) obtaining emission offsets for proposed emissions in an amount greater than one-to-one so that a
53 net air quality benefit will result; and

54 (2) ensuring emission offsets are quantifiable, enforceable and permanent by complying with the
55 following sections of 20.11.60 NMAC:

56 (a) 20.11.60.17 NMAC, *Emission Offset Baseline*;

1 (b) 20.11.60.18 NMAC, *Emission Offsets*; and

2 (c) 20.11.60.20 NMAC, *Air Quality Benefit*.

3 C. An existing source that is subject to 20.11.41.25 NMAC shall demonstrate a net air quality benefit
4 of at least a 20 percent reduction in ambient impact for each applicable contaminant. The 20 percent reduction shall
5 be calculated by subtracting the projected source impact from the existing source impact and dividing the result by
6 the existing source impact. The net air quality benefit also shall also comply with 20.11.60.20 NMAC, *Air Quality*
7 *Benefit*.

8 [20.11.41.25 NMAC – Rp, 20.11.41.25 NMAC, 1/15/09]

9
10 **20.11.41.26 COMPLIANCE CERTIFICATION:**

11 A. Notwithstanding any other provision in the New Mexico state implementation plan for air quality,
12 a permittee may use monitoring required by 20.11.42 NMAC, *Operating Permits*, in addition to compliance
13 methods specified in a permit issued to the source for the purpose of submitting a compliance certification.

14 B. 20.11.41.26 NMAC applies only to sources that are subject to 20.11.41 NMAC and are defined as
15 a major source in 20.11.42 NMAC, *Operating Permits*.

16 [20.11.41.26 NMAC – Rp, 20.11.41.26 NMAC, 1/15/09]

17
18 **20.11.41.27 ENFORCEMENT:** Notwithstanding any other provision in the New Mexico state
19 implementation plan for air quality, any credible evidence may be used to determine whether a person has violated
20 or is in violation of the terms or conditions of a permit issued pursuant to 20.11.41 NMAC, including a permit issued
21 to a source that meets the applicability requirements 20.11.61 NMAC, *Prevention of Significant Deterioration*, or
22 20.11.60 NMAC, *Permitting in Nonattainment Areas*.

23 A. Information obtained by using the following methods is presumptively credible evidence of
24 whether a violation has occurred at a source:

25 (1) a monitoring or information-gathering method approved for the source pursuant to 20.11.42
26 NMAC and incorporated in an operating permit; or

27 (2) compliance methods specified by the New Mexico state implementation plan for air quality.

28 B. The following are presumptively credible testing, monitoring or information gathering methods:

29 (1) any federally enforceable monitoring or testing method, including methods authorized or required
30 by 40 CFR, parts 51, 60, 61, 63 and 75; and

31 (2) other testing, monitoring or information gathering methods that produce information comparable
32 to information produced by any method authorized by Subsection A of 20.11.41.27 NMAC or Paragraph (1) of
33 Subsection B of 20.11.41.27 NMAC, as determined by the department.

34 [20.11.41.27 NMAC – Rp, 20.11.41.27 NMAC, 1/15/09]

35
36 **20.11.41.28 ADMINISTRATIVE AND TECHNICAL PERMIT REVISIONS:**

37 A. Administrative Permit Revision:

38 (1) An administrative permit revision may be used by the department or requested by the permittee to
39 revise a permit that has been issued pursuant to 20.11.41 NMAC in order to:

40 (a) correct a typographical error;

41 (b) identify a change in ownership, name, address or contact information of any person
42 identified in the permit;

43 (c) incorporate a change in the permit if the change is limited to retiring an emission unit at the
44 facility, which shall be effective when the department receives written notice that the emission unit has ceased
45 operation; and

46 (d) incorporate a change in the permit to include a source or activity at the facility if the facility
47 or activity is exempted by Paragraph (3) of Subsection B of 20.11.41.2 NMAC.

48 (2) An administrative permit revision shall:

49 (a) not be subject to Subsection D of 20.11.41.13 NMAC, *Applicant's Public Notice*
50 *Requirements*;

51 (b) not be subject to 20.11.41.14 NMAC, *Public Notice by Department – Public Participation*;

52 (c) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*; and

53 (d) be submitted on forms provided by the department.

54 (3) When the department receives a revision form, the department shall review the form. If the
55 department determines the revision qualifies as an administrative revision, the department shall file the revision with

1 the permit. However, the procedure authorized by Subsection A of 20.11.41.28 NMAC may not be used to create
2 federally enforceable conditions or emissions limitations to avoid any applicable requirement.

3 **B. Technical Permit Revision:**

4 (1) A technical permit revision may be requested by a permittee:

5 (a) to incorporate a change in the permit if the change only involves a change in monitoring,
6 record keeping or reporting requirements, if the department determines the change does not reduce the enforceability
7 of the permit;

8 (b) to incorporate a change in the permit if the change only involves incorporating permit
9 conditions, including emissions limitations, but only if the source existed on August 31, 1972, and the source has
10 been in regular operation since that date;

11 (c) if the permittee wishes to impose a voluntary reduction of an emission limitation that was
12 included as a specific permit conditions pursuant to Subsection B of 20.11.41.19 NMAC, *Permit Conditions*;

13 (d) to incorporate a change at a facility by replacing an emissions unit for which an allowable
14 emissions limit has been established in the permit, but only if the replacement emissions unit:

15 (i) is equivalent to the replaced emissions unit, and serves the same function within the
16 facility and process;

17 (ii) has the same or lower capacity and potential emission rates;

18 (iii) has the same or higher control efficiency, and stack parameters that are at least as
19 effective in dispersing air pollutants;

20 (iv) would not result in an increase of the potential emission rate of any other equipment
21 at the facility;

22 (v) is subject to the same or lower allowable emissions limits as the original permit prior
23 to making the replacement and to all other original permit conditions prior to making the technical permit revision
24 request;

25 (vi) will not cause or contribute to a violation of any NAAQS and NMAAQs when
26 operated under applicable permit conditions, and as determined by the department;

27 (vii) will not require additional permit conditions to ensure the enforceability of the
28 permit, such as additional record keeping or reporting in order to establish compliance, as determined by the
29 department; and

30 (viii) does not emit a regulated air contaminant not previously emitted.

31 (e) in order to reduce the potential emission rate of a unit or source, by incorporating terms and
32 conditions in the permit, such as a cap on hours of operation, limitations on throughput of a specific product or
33 products, or limitations on equipment capacity.

34 (f) to incorporate a change in the permit solely involving the addition of air pollution control
35 equipment or the substitution of a different type of air pollution control equipment to existing equipment if the
36 requested addition or substitution shall not result in an increase in the potential emission rate.

37 (2) An application for a technical revision to a permit shall:

38 (a) not be subject to Subsection D of 20.11.41.13 NMAC, *Applicant's Public Notice*
39 *Requirements*;

40 (b) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*;

41 (c) not be subject to 20.11.41.14 NMAC, *Public Notice by Department – Public Participation*;
42 and

43 (d) be submitted on forms provided by the department, with all information submitted by the
44 applicant certified as required by Paragraph (13) of Subsection C of 20.11.41.13 NMAC.

45 (3) Within 30 days of receipt of the application, the department shall approve or deny the technical
46 permit revision, or inform the applicant in writing that the request must be submitted as a permit modification.

47 (4) The department may deny an application for a technical permit revision or require that the
48 application be submitted as a permit modification if:

49 (a) the revision does not meet the criteria included in Subsection B of 20.11.41.28;

50 (b) in the judgment of the department, the revision would require a decision on a significant or
51 complex issue, or involve a substantive change; or

52 (c) in the judgment of the department, the permittee has submitted multiple or subsequent
53 applications for technical permit revisions under 20.11.41.28 NMAC that segment a larger revision or modification
54 that otherwise would not be eligible for a technical permit revision.

55 (5) The technical permit revision shall become effective when approved in writing by the department.
56 The department shall file the technical permit revision with the permit. However, the procedure established in

1 20.11.41.28 NMAC may not be used to create federally enforceable conditions or emissions limitations to avoid an
2 applicable requirement.

3 [20.11.41.28 NMAC – Rp, 20.11.41.28 NMAC, 1/15/09]
4

5 **20.11.41.29 PERMIT MODIFICATION:** A person who proposes a modification of a stationary source
6 shall comply with all requirements of 20.11.41 NMAC. Applications for permit modifications shall be processed in
7 accordance with all requirements established by 20.11.41 NMAC for permit applications, including public notice,
8 review, fees and hearing procedures.

9 [20.11.41.29 NMAC – Rp, 20.11.41.29 NMAC, 1/15/09]
10

11 **20.11.41.30 PERMIT REOPENING, REVISION AND REISSUANCE**

12 **A.** The department may impose reasonable terms and conditions upon a permit, including a schedule
13 of construction, the maximum period of time the permit shall be valid, and a condition requiring timely revision of
14 permit terms or conditions in order to meet new requirements, if any, under any federally required and approved
15 state implementation plan revision. The department may reopen, revise and reissue a permit if the department
16 determines:

17 (1) additional applicable requirements of the federal Clean Air Act or the New Mexico Air Quality
18 Control Act become applicable to the source, including excess emission requirements under the Title IV acid rain
19 program;

20 (2) the permit contains a substantive material mistake or that an inaccurate statement was made in the
21 permit application that resulted in incorrect or inappropriate evaluation of ambient air quality impacts or incorrect
22 or inappropriate terms and conditions in the permit, including emissions limitations;

23 (3) the permit requires reopening, revision and reissuance to ensure compliance with all applicable
24 requirements of the federal act, the state act and the board regulations;

25 (4) the permittee failed to disclose a material fact or a regulation that is applicable to the source as
26 required in the permit application process, and the applicant knew or should have known about the material fact or
27 regulation at the time the application was submitted; or

28 (5) the terms and conditions of a permit have not been or are not being met, as determined by the
29 department.

30 **B.** The department shall notify the permittee by certified mail no fewer than 60 days before the date
31 of the reopening of the permit, except that a shorter time period may be specified in case of an emergency. The
32 notification shall include a description of the reason or grounds for the reopening and revisions required, and any
33 information to be submitted to the department by the permittee. The permittee shall submit all required additional
34 information to the department no later than 30 days after receipt of the notification from the department. A
35 permittee may request additional time to provide required information by delivering the request in writing to the
36 department. The extension of time shall be effective if approved in writing by the department.

37 **C.** A permit that has been reopened and reissued may be appealed pursuant to 20.11.81 NMAC.
38 [20.11.41.30 NMAC – Rp, 20.11.41.30 NMAC, 1/15/09]
39

40 **20.11.41.31 GENERAL STATIONARY SOURCE PERMITS:**

41 **A. Issuance of general stationary source permits:**

42 (1) After notice has been provided as required by Subsections A-C of 20.11.41.14 NMAC and an
43 opportunity for public participation in a public information hearing has been provided as required by 20.11.41.15
44 NMAC, the department may issue one or more general stationary source permits to an applicant. Each general
45 stationary source permit shall cover numerous similar sources. General stationary source permits shall be issued to
46 sources that are generally homogeneous in terms of operations, processes and emissions, and subject to the same or
47 substantially similar requirements. General stationary source permits shall not be issued to sources that are subject to
48 case-by-case standards or requirements.

49 (2) Each general stationary source permit shall:

50 (a) describe which sources may qualify to apply for a general stationary source permit; and

51 (b) specify the contents of a complete application for a general stationary source permit; in the
52 general stationary source permit, the department may provide for applications which deviate from the requirements
53 of 20.11.41.13 NMAC, if the applications include:

54 (i) all information necessary to determine qualification for, and to assure compliance
55 with, the general stationary source permit; and

1 (ii) applicant's public notice requirements including, at a minimum, a notice: a)
2 published once in the legal notices section of a newspaper in general circulation in the county or counties in which
3 the property on which the facility is proposed to be constructed or operated is located; and b) posted at the proposed
4 or existing facility entrance in a publicly accessible and conspicuous place on the property on which the facility is,
5 or is proposed to be, located, until the general stationary source permit is granted or denied;

6 (c) contain permit terms and conditions which apply to all sources permitted as a general
7 stationary source permit, and which include:

8 (i) sufficient terms and conditions to assure that all sources permitted and operating in
9 accordance with the general stationary source permit will meet all applicable requirements under the federal Act, the
10 New Mexico Air Quality Control Act, 74 NMSA 1978, including 20.11.60 NMAC, *Permitting in Nonattainment*
11 *Areas*, 20.11.61 NMAC, *Prevention of Significant Deterioration*, 20.11.63 NMAC, *New Source Performance*
12 *Standards For Stationary Sources*, 20.11.64 NMAC and *Emission Standards for Hazardous Air Pollutants For*
13 *Stationary Sources*, and will not cause or contribute to air contaminant levels in excess of any national or New
14 Mexico Ambient Air Quality Standard; and

15 (ii) monitoring, record keeping and reporting requirements appropriate to the source and
16 sufficient to ensure compliance with the general stationary source permit; at a minimum, the general stationary
17 source permit shall specify where the records shall be maintained, how long the records shall be retained and that all
18 records or reports shall be made available upon request by the department; and

19 (iii) as appropriate, terms and conditions to address and report emissions occurring
20 during upsets, startups and maintenance;

21 (d) specify that every document, including every application form, report, compliance
22 certification and supporting data, that is submitted pursuant to 20.11.41.31 NMAC shall contain a certification that
23 meets the requirements of Paragraph (13) of Subsection C of 20.11.41.13 NMAC.

24 **B. Revisions to a general stationary source permit:**

25 (1) After notice has been provided as required by Subsections A-C of 20.11.41.14 NMAC and an
26 opportunity for public participation in a public information hearing has been provided as required by 20.11.41.15
27 NMAC, the department may revise a general stationary source permit. Notice of the proposed revision shall also be
28 sent to the owner or operator of all sources possessing the same type of general stationary source permit.

29 (2) A revision of a general stationary source permit shall include a reasonable transition schedule for
30 existing sources that possess a general stationary source permit to comply with the revision. The department shall
31 revise the general permit terms and conditions only to the extent necessary to ensure that the requirements of Sub-
32 paragraph (c) of Paragraph (2) of Subsection A of 20.11.41.31 NMAC are met.

33 **C. Application for a general stationary source permit:**

34 (1) The owner or operator of a source required to obtain a permit pursuant to 20.11.41 NMAC and
35 which qualifies to apply for a general stationary source permit shall either:

36 (a) apply to the department for a general stationary source permit; or

37 (b) apply for a stationary source permit under 20.11.41.2 NMAC.

38 (2) Within 30 days of receiving an application for a general stationary source permit, the department
39 shall review the application for completeness and shall grant or deny the application. The department shall not issue
40 the general stationary source permit until at least 15 days after the date the applicant's public notice was initiated. If
41 the department issues a general stationary source permit, the department shall notify the applicant of its
42 determination by certified mail. The department shall attach the general stationary source permit to a copy of the
43 approved application.

44 (3) The department shall grant a general stationary source permit to a source only if:

45 (a) the application is complete and meets the requirements of 20.11.41.31 NMAC; and

46 (b) the source meets the terms and conditions of the general stationary source permit.

47 (4) The department may grant or deny the application for a general stationary source permit without
48 repeating the public notice and participation procedures required under 20.11.41.14 NMAC and 20.11.41.15
49 NMAC.

50 (5) A person who participated in a permitting action in which the department made a determination
51 regarding whether or not a source qualifies to apply for a general stationary source permit or revision may file a
52 petition for hearing before the board as provided by Sections 74-2-7 H through L NMSA 1978. However, the
53 petition shall not include a request for hearing before the board regarding the terms of the general stationary source
54 permit form.

55 (6) It is a violation of 20.11.41 NMAC for a person to commence construction without a general
56 stationary source permit if:

- 1 (a) construction of a source is commenced prior to the applicant's receipt of a general
2 stationary source permit issued by the department; or
3 (b) it is determined after construction commences that a source does not qualify for a general
4 stationary source permit.
5 (7) A general stationary source permit may be suspended or revoked, as provided by 20.11.41.20
6 NMAC. The owner or operator shall notify the department of the actual startup of a source and any ownership and
7 operator changes, consistent with the provisions of 20.11.41.21 NMAC.

8 **D. Modifications of a source included in a general stationary source permit:** Before a source that
9 is included in a general stationary source permit can be modified, the permittee shall:

10 (1) notify the department in writing that a modification will occur and that the facility will continue to
11 meet the conditions of the general stationary source permit after the modification is complete; and

12 (2) obtain a stationary source permit from the department as required by 20.11.41 NMAC prior to the
13 modification if the source will not continue to meet the conditions of the general stationary source permit after the
14 modification.

15 [20.11.41.31 NMAC – Rp, 20.11.41.31 NMAC, 1/15/09]

16
17 **20.11.41.32 ACCELERATED REVIEW:**

18 **A. Qualified outside contractors:**

19 (1) The department shall request proposals from persons interested in providing assistance as a
20 qualified outside contractor in the accelerated review of permit applications under 20.11.41 NMAC.

21 (2) The department shall evaluate the proposals submitted by the interested persons. To be eligible to
22 contract with the department as a qualified outside contractor, a person must be:

23 (a) legally qualified to contract with the department; and

24 (b) qualified to assist the department in review of permit applications, as determined by the
25 department in the department's sole discretion.

26 (3) Persons who are selected as qualified outside contractors shall be under contract with the
27 department to provide accelerated review of permit applications pursuant to 20.11.41.32 NMAC.

28 **B. Requests for accelerated review:**

29 (1) At the sole discretion of the applicant, an applicant for a permit pursuant to 20.11.41.32 NMAC
30 may request accelerated permit review of the application by a qualified outside contractor. Applications for
31 accelerated review shall be preceded by a pre-application meeting between the applicant and the department.
32 Requests for accelerated review shall not be granted unless there is at least one qualified outside contractor under
33 contract with the department pursuant to Paragraph (3) of Subsection A of 20.11.41.32 NMAC. If there are no
34 persons under contract to provide accelerated review, the department shall review the application in accordance with
35 20.11.41.16 NMAC.

36 (2) A request for accelerated permit review shall be submitted with the permit application and a
37 corporate check or money order for the amount of the accelerated review filing fee as specified in 20.11.2 NMAC.
38 The department shall notify the applicant of the names and addresses of the qualified outside contractors. The
39 applicant shall deliver a copy of the application, by mail or hand delivery, to each qualified outside contractor
40 identified by the department, unless the applicant is aware of a conflict of interest.

41 (3) Participation in the accelerated permit review process shall not relieve the applicant of any
42 responsibilities imposed by a board regulation.

43 (4) Applicants who have chosen accelerated review pursuant to 20.11.41.32 NMAC shall pay the
44 accelerated review fee required by 20.11.2 NMAC in addition to all other applicable fees imposed by 20.11.2
45 NMAC.

46 (5) Qualified outside contractors under contract that are interested in performing accelerated review
47 of a specific application shall submit to the department:

48 (a) a statement of interest;

49 (b) a statement of qualifications for the specific application;

50 (c) an estimate of the cost and schedule for the review; and

51 (d) a notarized affidavit attesting that no conflict of interest exists on the specific permit
52 application.

53 (6) In the department's sole discretion, the department shall review the submittals and determine
54 which persons qualify to review a specific application.

55 (7) If no qualified outside person submits the four items required by Paragraph (5) of Subsection B of
56 20.11.41.32 NMAC, the department shall impose the accelerated review filing fee and the permit application review

1 fee required by 20.11.2 NMAC and review the application without the assistance of a qualified outside contractor
2 and in accordance with 20.11.41.16 NMAC.

3 **(8)** Before the department determines whether an application for accelerated review is
4 administratively complete, the department shall provide the applicant with a written bid summary of the qualified
5 outside contractor submittals that show the costs of the accelerated review and the anticipated schedule for
6 reviewing the application, drafting the permit and issuing the permit. The department shall determine whether an
7 application for accelerated review is administratively complete.

8 **(9) Applicant's responsibilities for response to bid summary.**

9 **(a)** Within five working days after the applicant receives the department's bid summary, the
10 applicant shall either:

11 **(i)** submit to the department a written recommendation to accept one of the accelerated
12 review bids, or a prioritized list of more than one of the accelerated review bids, including a brief justification for
13 the recommendation with a corporate check or money order payable to the department for the amount specified in
14 the bid summary and a notarized affidavit attesting that no conflict of interest exists regarding the applicant's
15 recommended selections; or

16 **(ii)** submit to the department a written withdrawal of the request for accelerated review.

17 **(b)** The department shall deem the applicant's request for accelerated review withdrawn if the
18 applicant fails to submit a written recommendation or written withdrawal within five working days after the
19 applicant has received the department's bid summary unless the applicant has submitted a written request for an
20 extension and the department has granted an extension in writing.

21 **(10) Department's selection of qualified outside contractor.**

22 **(a)** If the request for accelerated review is withdrawn, the department shall retain the
23 accelerated review filing fee required by 20.11.2 NMAC and shall review the application without the assistance of a
24 qualified outside contractor and pursuant to 20.11.41.16 NMAC.

25 **(b)** If the applicant recommends a qualified submittal, the department shall determine whether
26 to accept the recommended submittal. If the department accepts the recommended submittal, the department shall
27 instruct the qualified outside contractor to begin review of the application. If the department rejects the
28 recommended submittal, the department shall inform the applicant and allow the applicant to recommend an
29 alternate submittal pursuant to Paragraph (9) of Subsection B of 20.11.41.32 NMAC or, if there are no other
30 qualified submittals, the department shall retain the accelerated review filing fee required by 20.11.2 NMAC and
31 review the application without the assistance of a qualified outside contractor pursuant to 20.11.41.16 NMAC.

32 **C. Disclosure of conflict of interest during accelerated review:**

33 **(1)** The applicant and the qualified outside contractor have a continuing obligation to investigate
34 potential conflicts of interest and to immediately disclose any conflict of interest to the department in writing. If a
35 conflict of interest is not disclosed as required by Subparagraph (d) of Paragraph (5) of Subsection B of 20.11.41.32
36 NMAC and is later disclosed or discovered, the department may:

37 **(a)** deny the application pursuant to 20.11.41.17 NMAC;

38 **(b)** terminate accelerated review and review the application pursuant to 20.11.41.16 NMAC; or

39 **(c)** allow accelerated review to continue after elimination of the conflict.

40 **(2)** In choosing among the options provided by Subparagraphs (a)-(c) of Paragraph (1) of Subsection
41 C of 20.11.41.32 NMAC, the department shall consider whether the conflict of interest was disclosed or discovered,
42 the timing of the disclosure or discovery, the applicant's diligence in investigating potential conflicts of interest, any
43 indication of intentional or willful failure to disclose, the significance of the conflict of interest, and the applicant's
44 ability to eliminate the conflict of interest in a timely manner.

45 **D. Issuance of a permit after accelerated review:**

46 **(1)** Upon completion of the review, the qualified outside contractor shall provide the department with
47 a draft permit and all documentation pertaining to the permit application, including all communications, notes and
48 drafts. At any time during the review, the qualified outside contractor shall provide the department with all
49 documentation pertaining to a specific application requested by the department in writing. The documentation shall
50 be subject to the Inspection of Public Records Act, Chapter 14, Article 2 NMSA 1978, and the confidential
51 information section of the Air Quality Control Act, 74-2-11 NMSA 1978.

52 **(2)** The department shall review the analysis prepared by the qualified outside contractor and shall
53 grant, grant subject to conditions or deny the requested permit pursuant to 20.11.41.17 NMAC. The department
54 retains final authority to accept or reject the qualified outside contractor's analysis regarding the permit application.

55 **(3)** The department shall not issue the permit until the applicant has paid both the accelerated review
56 processing fee and the permit review fee required by 20.11.2 NMAC.

1 [20.11.41.32 NMAC – Rp, 20.11.41.32 NMAC, 1/15/09]

2
3 **20.11.41.33 SIGNIFICANT AMBIENT CONCENTRATIONS -- NONATTAINMENT**

4
5 **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 mg/m ³	--	2.0 mg/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					

7 [20.11.41.33 NMAC – Rp, 20.11.41.33 NMAC, 1/15/09]

8
9 **20.11.41.34 PERMIT STREAMLINING SOURCE CLASS CATEGORIES: [RESERVED]**

10 [20.11.41.34 NMAC – Rp, 20.11.41.34 NMAC, 1/15/09]

11
12
13 **HISTORY OF 20.11.41 NMAC:**

14 **Pre-NMAC History:** The material in 20.11.41 NMAC was derived from that previously filed with the commission
15 of public records – State records center and archives.

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

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

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

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

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

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

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

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

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

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

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

28
29 **History of Repealed Material:** [Reserved]

30
31 **Other History:**

32 Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, filed 12/16/94 91 was

33 **renumbered and reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.41,
34 Authority-To-Construct Permits, filed 10/27/95.

35 20 NMAC 11.41, Authority-To-Construct Permits, filed 10/27/95 was **renumbered, reformatted, amended and**
36 **replaced** by 20.11.41 NMAC, Authority-To-Construct Permits, effective 10/1/02.

