

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

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**IN THE MATTER OF THE PETITION TO AMEND
20.11.63 NMAC, *NEW SOURCE PERFORMANCE STANDARDS FOR
STATIONARY SOURCES*, AND 20.11.64 NMAC, *EMISSION STANDARDS FOR
HAZARDOUS AIR POLLUTANTS FOR STATIONARY SOURCES*, AND
REQUEST UPDATED DELEGATION OF AUTHORITY FROM EPA**

AQCB Petition No. 2008-4

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

**Petition to amend 20.11.63 NMAC, *New Source Performance Standards For
Stationary Sources*, and 20.11.64 NMAC, *Emission Standards For Hazardous Air
Pollutants For Stationary Sources*, and request for updated delegation of authority
from EPA and request for 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) to amend: 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources* by incorporating by reference new and modified New Source Performance Standards published through August 1, 2008, at 40 CFR 60, *New Source Performance Standards* (NSPS); and to amend 20.11.64 NMAC, *Emission Standards For Hazardous Air Pollutants For Stationary Sources* by incorporating by reference new and modified standards published through August 1, 2008, at 40 CFR 61, *National Emission Standards For Hazardous Air Pollutants* (NESHAP), and at 40 CFR 63, *National Emission Standards For Hazardous Air Pollutants By Source Category* (NESHAP by Source Category); and to request updated delegation of authority from EPA

to enforce these regulations. This Petition includes a request for a hearing on these matters and permission 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] authorizes and requires the Board to adopt, amend, or replace air quality regulations and to adopt air quality plans (SIPs) under NMSA 1978, Section 74-2-5.B(2).

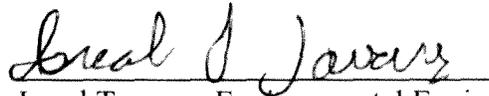
3. The AQD is petitioning the Board to amend 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources* and 20.11.64 NMAC, *Emission Standards For Hazardous Air Pollutants For Stationary Sources*, for the following reasons:

The Environmental Health Department's Air Quality Division routinely updates these regulations to incorporate federal requirements so that the Division can remain up to date on new and modified standards developed at the federal level. In addition, it is proposed that the EPA update its delegation to the Department of authority to locally administer and enforce the standards referenced above, throughout Albuquerque and Bernalillo County. Local delegation authorizes the Department to require local air pollution sources to comply with these standards.

4. It is anticipated that the hearing will take approximately 1 hour or less.

5. The proposed Public Review Drafts for 20.11.63 NMAC and 20.11.64 NMAC are attached as AQD Exhibits #1 & #2 respectively.

Respectfully submitted,



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

CERTIFICATION

I hereby certify that a copy of this Petition to Amend 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*, and 20.11.64 NMAC, *Emission Standards For Hazardous Air Pollutants For Stationary Sources*, and requesting updated delegation of authority from EPA and a request for hearing was delivered to the following person on October 28, 2008.

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


Isreal Tavarez

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1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
3 **PART 63 NEW SOURCE PERFORMANCE STANDARDS FOR STATIONARY SOURCES**

5 **20.11.63.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, c/o
6 Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) [768-
7 2600] 768-2601.
8 [1/1/2000; 20.11.63.1 NMAC - Rn, 20 NMAC 11.63.1, 10/1/02; A, 1/1/05]

10 **20.11.63.2 SCOPE:** 20.11.63 NMAC is applicable to all stationary sources of air pollutants located within
11 Bernalillo county, which are subject to the requirements of 40 CFR Part 60, as amended in the *Federal Register*
12 through [October 28, 2006] August 1, 2008.

13 **A. Exempt:** 20.11.63 NMAC does not apply to sources within Bernalillo county that are located on
14 Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

15 **B. Exclusions:**
16 (1) 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters.
17 (2) Reserved.

18 **C. Variances:** The variance provisions of 20.11.7 NMAC, Variance Procedure, Revised Ordinances
19 of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinance 94-5, Section 8, and NMSA 1978 Section 74-2-
20 8 shall not apply to 20.11.63 NMAC or the incorporated federal standards.
21 [1/1/2000; 20.11.63.2 NMAC - Rn, 20 NMAC 11.63.2, 10/1/02; A, 1/1/05; A, 1/1/06; A, 1/15/07]

23 **20.11.63.3 STATUTORY AUTHORITY:** 20.11.63 NMAC is adopted pursuant to the authority provided in
24 the New Mexico Air Quality Act, NMSA 1978 Sections 74-2-4 and 74-2-5; the Joint Air Quality Control Board
25 Ordinance, Bernalillo County Ordinance 94-5 Sections 3 and 4; and the Joint Air Quality Control Board Ordinance,
26 Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4.
27 [1/1/2000; 20.11.63.3 NMAC - Rn, 20 NMAC 11.63.3, 10/1/02; A, 1/1/05]

29 **20.11.63.4 DURATION:** Permanent.
30 [1/1/2000; 20.11.63.4 NMAC - Rn, 20 NMAC 11.63.4, 10/1/02]

32 **20.11.63.5 EFFECTIVE DATE:** December 1, 1999, unless a later date is cited at the end of a section.
33 [1/1/2000; 20.11.63.5 NMAC - Rn, 20 NMAC 11.63.5 & A, 10/1/02]

35 **20.11.63.6 OBJECTIVE:** To adopt specified federal New Source Performance Standards (NSPS) codified
36 at 40 CFR Part 60 as part of 20.11.63 NMAC.
37 [1/1/2000; 20.11.63.6 NMAC - Rn, 20 NMAC 11.63.6, 10/1/02; A, 1/1/05]

39 **20.11.63.7 DEFINITIONS:** [Reserved]

41 **20.11.63.8 SAVINGS CLAUSE:** Any amendment to 20.11.63 NMAC, New Source Performance Standards
42 for Stationary Source that is filed with the state records center and archives shall not affect actions pending for
43 violation of a city or county ordinance or the version of 20.11.63 NMAC, New Source Performance Standards For
44 Stationary Sources, in effect prior to amendment. Prosecution for a violation under prior regulation wording shall be
45 governed and prosecuted under the ordinance, part, or regulation section in effect at the time the violation was
46 committed.
47 [1/1/2000; 20.11.63.8 NMAC - Rn, 20 NMAC 11.63.8, 10/1/02; A, 1/1/05]

49 **20.11.63.9 SEVERABILITY:** If any section, subsection, sentence, phrase, clause, or wording of 20.11.63
50 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid
51 by any court, the decision shall not affect the validity of remaining portions of 20.11.63 NMAC.
52 [1/1/2000; 20.11.63.9 NMAC - Rn, 20 NMAC 11.63.9, 10/1/02; A, 1/1/05]

54 **20.11.63.10 DOCUMENTS:** Documents incorporated and cited in 20.11.63 NMAC may be viewed at the
55 Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.
56 [1/1/2000; 20.11.63.10 NMAC - Rn, 20 NMAC 11.63.10, & A, 10/1/02; A, 1/1/05]

1
2 **20.11.63.11 INCORPORATION OF FEDERAL STANDARDS:** Except as otherwise provided in 20.11.63
3 NMAC, the New Source Performance Standards promulgated by the United States environmental protection agency,
4 and codified at 40 CFR Part 60, including Subpart A-General Provisions thereto, as amended in the *Federal Register*
5 through [~~October 28, 2006~~] August 1, 2008, are hereby incorporated into 20.11.63 NMAC.
6 [1/1/2000; 20.11.63.11 NMAC - Rn, 20 NMAC 11.63.11, 10/1/02; A, 1/1/05; A, 1/15/07]
7

8 **20.11.63.12 MODIFICATIONS AND EXCEPTIONS:** For purposes of administering and enforcing
9 20.11.63 NMAC, the following modification or exception is made to the federal standards that are incorporated in
10 20.11.63 NMAC. When the director of Albuquerque environmental health department is exercising the authority
11 delegated to the director by the United States environmental protection agency, the definition of "administrator" of
12 the United States environmental protection agency that is included in 40 CFR 60.2, Definitions, shall be changed to
13 "director" of the Albuquerque environmental health department.
14 [1/1/2000; 20.11.63.12 NMAC - Rn, 20 NMAC 11.63.12, 10/1/02; A, 1/1/05]
15

16 **HISTORY OF 20.11.63 NMAC:**

17 **Pre-NMAC History:** The material in this part was derived from that previously filed with the Commission of
18 Public Records-State Records Center and Archives.

19 Regulation No. 30, New Source Performance Standards, 1/3/85;
20 Regulation No. 30, New Source Performance Standards, 6/18/86;
21 Regulation No. 30, New Source Performance Standards, 7/14/89;
22 Regulation No. 30, New Source Performance Standards, 1/14/92;
23 Regulation No. 30, New Source Performance Standards, 4/22/93;
24 Regulation No. 30, New Source Performance Standards, 12/16/94.
25

26 **History of Repealed Material:** 20 NMAC 11.63, New Source Performance Standards for Stationary Sources, filed
27 08-30-95.
28

29 **Other History:** Regulation No. 30, New Source Performance Standards, filed 12/16/94, was **renumbered** and
30 **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.63, New Source
31 Performance Standards for Stationary Sources, filed 08/30/95.
32 20 NMAC 11.63, New Source Performance Standards for Stationary Sources, filed 08/30/95 was **replaced** by 20
33 NMAC 11.63, New Source Performance Standards for Stationary Sources, filed 11/22/99.
34 20 NMAC 11.63, New Source Performance Standards for Stationary Sources, filed 11/22/99 was **renumbered,**
35 **reformatted, amended and replaced** by 20.11.63 NMAC, New Source Performance Standards for Stationary
36 Sources, effective 10/1/02
37

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 64 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR STATIONARY SOURCES

20.11.64.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) [768-2600] 768-2601.
[1/1/2000; 20.11.64.1 NMAC - Rn, 20 NMAC 11.64.1, 10/1/02; A, 1/1/05]

20.11.64.2 SCOPE: 20.11.64 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to any requirements of 40 CFR Part 61 or Part 63, as amended in the *Federal Register* through [~~October 28, 2006~~] August 1, 2008.

A. Exempt: 20.11.64 NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:

- (1) 40 CFR 61, Subpart B, National Emission Standards for Radon Emissions From Underground Uranium Mines;
- (2) 40 CFR 61, Subpart H, National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities;
- (3) 40 CFR 61, Subpart I, National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H;
- (4) 40 CFR 61, Subpart K, National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants;
- (5) 40 CFR 61, Subpart Q, National Emission Standards for Radon Emissions From Department of Energy Facilities;
- (6) 40 CFR 61, Subpart R, National Emission Standards for Radon Emissions From Phosphogypsum Stacks;
- (7) 40 CFR 61, Subpart T, National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings; and
- (8) 40 CFR 61, Subpart W, National Emission Standards for Radon Emissions From Operating Mill Tailings.

C. Variances: The variance provisions of 20.11.07 NMAC, Variance Procedure, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinance 94-5, Section 8 and NMSA 1978 Section 74-2-8 shall not apply to 20.11.64 NMAC or the incorporated federal standards.
[1/1/2000; 20.11.64.2 NMAC - Rn, 20 NMAC 11.64.2, 10/1/02; A, 1/1/05; A, 1/15/07]

20.11.64.3 STATUTORY AUTHORITY: 20.11.64 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Act, NMSA 1978 Sections 74-2-4 and 74-2-5; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 and 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4.
[1/1/2000; 20.11.64.3 NMAC - Rn, 20 NMAC 11.64.3, 10/1/02; A, 1/1/05]

20.11.64.4 DURATION: Permanent.
[1/1/2000; 20.11.64.4 NMAC - Rn, 20 NMAC 11.64.4, 10/1/02]

20.11.64.5 EFFECTIVE DATE: December 1, 1999, unless a later date is cited at the end of a section.
[1/1/2000; 20.11.64.5 NMAC - Rn, 20 NMAC 11.64.5 & A, 10/1/02]

20.11.64.6 OBJECTIVE: To adopt specified federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and National Emissions Standards for Hazardous Air Pollutants for Source Categories codified at 40 CFR Parts 61 and 63 as part of 20.11.64 NMAC.
[1/1/2000; 20.11.64.6 NMAC - Rn, 20 NMAC 11.64.6, 10/1/02; A, 1/1/05]

20.11.64.7 DEFINITIONS: [Reserved]

20.11.64.8 SAVINGS CLAUSE: Any amendment to 20.11.64 NMAC, Emission Standards For Hazardous Air Pollutants For Stationary Sources that is filed with the state records center and archives shall not affect actions pending for violation of a city or county ordinance or the version of 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, in effect prior to amendment. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the ordinance, part, or regulation section in effect at the time the violation was committed.

[1/1/2000; 20.11.64.8 NMAC - Rn, 20 NMAC 11.64.8, 10/1/02; A, 1/1/05]

20.11.64.9 SEVERABILITY: If any section, subsection, sentence, phrase, clause, or wording of 20.11.64 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining portions of 20.11.64 NMAC.

[1/1/2000; 20.11.64.9 NMAC - Rn, 20 NMAC 11.64.9, 10/1/02; A, 1/1/05]

20.11.64.10 DOCUMENTS: Documents incorporated and cited in 20.11.64 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[1/1/2000; 20.11.64.10 NMAC - Rn, 20 NMAC 11.64.10, & A, 10/1/02; A, 1/1/05]

20.11.64.11 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 61:

Except as otherwise provided, the National Emission Standards for Hazardous Air Pollutants, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 61, including Subpart-A, General Provisions thereto, as amended in the *Federal Register* through [~~October 28, 2006~~] August 1, 2008, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.11 NMAC - Rn, 20 NMAC 11.64.11, 10/1/02; A, 1/1/05; A, 1/15/07]

20.11.64.12 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 63:

Except as otherwise provided, the National Emissions Standards for Hazardous Air Pollutants for Source Categories, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 63, including Subpart-A, General Provisions thereto, as amended in the *Federal Register* through [~~October 28, 2006~~] August 1, 2008, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.12 NMAC - Rn, 20 NMAC 11.64.12, 10/1/02; A, 1/1/05; A, 1/15/07]

20.11.64.13 MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY (MACT) DETERMINATIONS FOR CONSTRUCTED AND RECONSTRUCTED MAJOR SOURCES OF HAZARDOUS AIR

POLLUTANTS: Any owner or operator that constructs or reconstructs a major source of hazardous air pollutants shall be required to perform a MACT determination, approved by the department, consistent with the provisions of 40 CFR 63, Sections 40 through 44. Any MACT emission limitations or requirements shall be incorporated into any permit issued pursuant to 20.11.41 NMAC, Authority-to-Construct, or 20.11.42 NMAC, Operating Permits.

[1/1/2000; 20.11.64.13 NMAC - Rn, 20 NMAC 11.64.13, 10/1/02; A, 1/1/05]

20.11.64.14 MODIFICATIONS AND EXCEPTIONS: The following modifications or exceptions are made to the incorporated federal standards:

A. For purposes of administering and enforcing 40 CFR 61, the following modification or exception is made to the federal standards that are incorporated in 40 CFR 61. When the director of the Albuquerque environmental health department is exercising the authority delegated to the director by the United States environmental protection agency, the definition of "administrator" of the United States environmental protection agency that is included in 40 CFR 61.02, Definitions, shall be changed to "director" of the Albuquerque environmental health department.

B. For purposes of administering and enforcing 40 CFR 63, the following modification or exception is made to the federal standards that are incorporated in 40 CFR 63. When the director of the Albuquerque environmental health department is exercising the authority delegated to the director by the United States environmental protection agency, the definition of "administrator" of the United States environmental protection agency that is included in 40 CFR 63.2, Definitions, shall be changed to "director" of the Albuquerque environmental health department.

C. Pursuant to 40 CFR 63.42(b), the effective date for the incorporation of 40 CFR 63, Sections 40 through 44, shall be June 29, 1999. If the department does not have a program to adequately implement the provisions of Section 112(g) of the Clean Air Act, all case-by-case MACT determinations made by the department

shall be submitted in writing to the EPA regional administrator for concurrence. All applicable MACT emission limitations and requirements shall be incorporated into all permits issued by the department.
[1/1/2000; 20.11.64.14 NMAC - Rn, 20 NMAC 11.64.14, 10/1/02; A, 1/1/05]

HISTORY OF 20.11.64 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.

Regulation No. 31, Emission Standards for Hazardous Air Pollutants, 1/3/85;
Regulation No. 31, Emission Standards for Hazardous Air Pollutants, 6/18/86;
Regulation No. 31, Emission Standards for Hazardous Air Pollutants, 7/14/89;
Regulation No. 31, Emission Standards for Hazardous Air Pollutants, 1/14/92;
Regulation No. 31, Emission Standards for Hazardous Air Pollutants, 4/22/93;
Regulation No. 31, Emission Standards for Hazardous Air Pollutants, 12/16/94.

History of Repealed Material: 20 NMAC 11.64, Emission Standards for Hazardous Air Pollutants for Stationary Sources, filed 08-30-95.

Other History: Regulation No. 31, Emission Standards for Hazardous Air Pollutants, filed 12/16/94, was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.64, Emission Standards for Hazardous Air Pollutants for Stationary Sources, filed 08-30-95.
20 NMAC 11.64, Emission Standards for Hazardous Air Pollutants for Stationary Sources, filed 08-30-95 was **replaced** by 20 NMAC 11.64, Emission Standards for Hazardous Air Pollutants for Stationary Sources, filed 11/22/99.
20 NMAC 11.64, Emission Standards for Hazardous Air Pollutants for Stationary Sources, filed 11/22/99, **renumbered, reformatted, amended and replaced** by 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, effective 10/1/02.