TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 2 FEES

20.11.2.1 ISSUING AGENCY: Albuquerque - Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) [~~768-2600~~] 768-2601.
[20.11.2.1 NMAC - Rp, 20 NMAC.11.02.I.1, 7/1/2001; A, XX/XX/XX]

20.11.2.2 SCOPE:

A. Applicability:

[~~(1) any person required to obtain a permit pursuant to 20.11.42 NMAC;~~
~~(2) any person required to obtain a permit pursuant to 20.11.41 NMAC;~~
~~(3) any person with a valid registration or permit issued pursuant to 20.11.40 NMAC, 20.11.41 NMAC, or 20.11.42 NMAC;~~
~~(4) any person required to obtain a fugitive dust control permit pursuant to 20.11.20 NMAC, Fugitive Dust Control;~~
~~(5) any person required to provide notification regarding removing regulated asbestos containing material pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources;~~
~~(6) any person requesting professional or administrative services or copies of public records; and~~
~~(7) any person who requests a variance or a hearing before the board.~~]

(1) every person required to submit a source registration application pursuant to 20.11.40 NMAC, *Source Registration* or other board regulation;

(2) except for sources subject to 20.11.42 NMAC, Operating Permits, every person required to submit a permit application pursuant to 20.11.20 NMAC, *Fugitive Dust Control;* 20.11.41 NMAC, *Authority to Construct;* 20.11.60 NMAC, *Permitting in Nonattainment Areas;* 20.11.61 NMAC, *Prevention of Significant Deterioration*; or other board regulation;

(3) every person with a valid source registration or permit issued pursuant to 20.11.20 NMAC; 20.11.40 NMAC; 20.11.41 NMAC; 20.11.42 NMAC; 20.11.60 NMAC; 20.11.61 NMAC; or other board regulation;

(4) every person who submits a permit modification pursuant to 20.11.41 NMAC, *Authority to Construct*; 20.11.60 NMAC, *Permitting in Nonattainment Areas;* or 20.11.61 NMAC, *Prevention of Significant Deterioration;*

(5) every person who submits a technical permit revision pursuant to 20.11.41 NMAC, *Authority to Construct*;

(6) every person who submits an administrative revision to either a source registration issued pursuant to 20.11.40 NMAC, *Source Registration,* or a permit issued pursuant to 20.11.41 NMAC, *Authority to Construct;*

(7) every person required to submit a notification regarding removal of regulated asbestos containing material pursuant to 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*;

(8) every person who submits a request for a variance pursuant to 20.11.7 NMAC, *Variance Procedure*;

(9) every person who submits a request for a hearing before the board unless otherwise exempted;

(10) every person required to submit an air quality impact analysis pursuant to the Revised Ordinances of Albuquerque 1994, Section 14-16-3-14, *Air Quality Impact Regulations*; and

(11) every person who submits a request for professional or administrative services or copies of public records.

B. Exempt: 20.11.2 NMAC does not apply to:

(1) sources within Bernalillo county that are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction;

(2) requests for rulemaking hearings filed pursuant to 20.11.82 NMAC; and

(3) requests for hearings regarding decisions made by the vehicle pollution management program manager or designee concerning suspension or revocation of air care station certifications or air care inspector certifications.

C. Variance: Any person may request a timely variance from the requirements of 20.11.2 NMAC in accordance with [~~*Variance Procedures*,~~] 20.11.7 NMAC, *Variance Procedures*, [~~if allowed~~] unless prohibited by a federal, state or local [~~laws and regulations~~] law or regulation.
[20.11.2.2 NMAC - Rp, 20 NMAC 11.02.I.2 & 20 NMAC 11.02.I.8, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.3 STATUTORY AUTHORITY: 20.11.2 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5 and 74-2-7; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5, Sections 3, [~~and~~] 4 and 7; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Section 9-5-1-3, [~~and~~] Section 9-5-1-4 and Section 9-5-1-7.
[20.11.2.3 NMAC - Rp, 20 NMAC 11.02.I.3, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.4 DURATION: Permanent.
[20.11.2.4 - Rp, 20 NMAC 11.02.I.4, 7/1/2001]

20.11.2.5 EFFECTIVE DATE: July 1, 2001, unless a later date is cited at the end of a section or paragraph.
[20.11.2.5 NMAC - Rp, 20 NMAC 11.02.I.5, 7/1/2001]

20.11.2.6 OBJECTIVE:
[~~**A.** To implement the requirements of 74-2-7 NMSA by establishing:~~] To establish fees sufficient to cover the reasonable costs of implementing and enforcing the requirements of: the federal Clean Air Act (CAA); the New Mexico Air Quality Control Act, Chapter 74, Article 2, NMSA 1978; the City of Albuquerque and Bernalillo County Joint Air Quality Control Board Ordinances; and the Albuquerque-Bernalillo county air quality control board regulations, including:
A. [~~(1) reasonable fees to cover the cost of reviewing and acting on any permit application received by the Department~~] reviewing and acting upon submittals made pursuant to Subsection A of 20.11.2.2 NMAC;
B. [~~(2) reasonable fees to cover the cost of implementing and enforcing the terms and conditions of~~ [~~any permit issued by the department; and~~] implementing and enforcing the terms and conditions of source registrations or permits, but not including any court costs or other costs associated with an enforcement action;
C. [~~(3) a schedule of operating permit fees consistent with Section 502(b)(3) of the Clean Air Act and the joint air quality control board ordinances.~~] reviewing air dispersion modeling analysis and demonstrations;
D. reviewing emission inventory submittals, conducting electronic filing and maintaining inventories, preparing emission inventories and tracking emissions;
E. developing, adopting, promulgating, publishing, amending and repealing regulations;
F. conducting emissions monitoring and ambient air monitoring;
[~~**B.**~~]**G.** [~~To establish reasonable fees to partially offset the administrative cost of~~] administering variance procedures; [~~and~~]
H. [~~permit-related~~] administering administrative hearings before the board as authorized by 20.11.81 NMAC, *Adjudicatory Procedures – Air Quality Control Board*; and
[~~**C.**~~]**I.** [~~To implement the requirements of Section 507 of the federal clean air act by establishing adequate funding for~~] administering a small business stationary source technical and environmental compliance assistance program pursuant to Section 507 of the federal CAA.
[~~**D.** To establish reasonable fees to cover the administrative expenses incurred by the department in implementing and enforcing the provisions of the federal clean air act, New Mexico air quality control act, the joint air quality control board ordinances, and the Albuquerque-Bernalillo county air quality control board regulations; and~~
~~**E.** 20.11.2 NMAC is permanent. A financial audit of the division shall be performed for city of Albuquerque fiscal year 2005 (July 1, 2004 through June 30, 2005). The results of the audit shall be reported to the air board during city fiscal year 2006.~~]
[20.11.2.6 NMAC - Rp, 20 NMAC 11.02.I.6, 7/1/2001; A, 3/1/04; A, 12/16/06; A, XX/XX/XX]

20.11.2.7 DEFINITIONS: [~~Throughout 20.11.2 NMAC, the terms defined shall have the following meanings. For the purpose of 20.11.2 NMAC, if there is any apparent conflict between the meaning of a definition in 20.11.2 NMAC and a definition in another part, the definition in 20.11.2 NMAC shall prevail and apply.~~] In addition to the definitions in 20.11.2.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.2.7 NMAC shall govern.

A. "Administrative revision" means a revision to either:

(1) a source registration issued pursuant to 20.11.40 NMAC, to incorporate a change in the stationary source information that does not result in the source being subject to 20.11.41 NMAC; or

(2) a permit that has been issued pursuant 20.11.41 NMAC in order to:

(a) correct a typographical error not made by the department;

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

(c) incorporate a change in the permit to include a source or activity at the facility if the facility is exempted pursuant 20.11.41 NMAC.

[~~A.~~]**B. "Allowable emission rate"** means the [~~most stringent~~] fee-pollutant emission [~~limit~~] rate that has been established by a permit issued by the department [~~or the source's potential-to-emit~~].

C. "Asbestos Unit" or "AU" is the number derived by dividing the amount of asbestos removed, at or above the levels specified in 40 CFR 61.145, by the corresponding conversion factor and unit of measure in square feet, linear feet, or cubic feet respectively.

D. "Consumer price index all urban consumers" or "CPI-U" means a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

E. "Division" means the department's air quality division or successor organizational unit.

[~~B.~~]**F. "Efficiency control factor"** means a factor used in conjunction with a fugitive dust source classification to determine the annual fee per acre to be paid for a programmatic permit issued pursuant to 20.11.20 NMAC. The four fugitive dust source classifications pertaining to programmatic permits are "no impact source", "low impact source", "moderate impact source" and "high impact source", which are defined in 20.11.2.7 NMAC.

[~~C.~~]**G. "Emissions unit"** means any part or activity of a stationary or portable source that emits or has the potential to emit [~~any~~] a fee pollutant.

[~~D.~~]**H. "Fee pollutant"** means:

[~~(1) sulfur dioxide (SOx);~~

~~(2) nitrogen dioxide based on total oxides of nitrogen (NOx);~~

~~(3) carbon monoxide (CO);~~

~~(4) particulate matter with an aerodynamic diameter less than or equal to 30 micrometers (TSP);~~

~~(5) any volatile organic compound as defined in 40 CFR 51.100(s), as amended;~~

~~(6) any hazardous air pollutant listed pursuant to 112(b) of the federal Clean Air Act;~~

~~(7) any regulated substance listed pursuant to Section 112(r) of the federal Clean Air Act; and~~

~~(8) any other pollutant determined by the board after public hearing~~]

any regulated air pollutant as defined in 20.11.2.7 NMAC, not including any Class I or II substance subject to a standard established in Title VI of the federal Clean Air Act.

[~~E.~~]**I. "Fugitive emissions"** means emissions that cannot reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

[~~F.~~]**J. "High impact source"** means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 10 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a high impact source based on professional judgment, sound technical information or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. The purpose of classifying a fugitive dust source as a high impact source is [~~so the programmatic permit fees can be calculated~~] to calculate the fees for a programmatic permit issued pursuant to 20.11.20 NMAC. For a high impact source, the applicable efficiency control factor for calculating fees [~~shall be~~] is 0.9.

[~~G.~~]**K. "Low impact source"** means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a

source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 90 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a low impact source based on professional judgment, sound technical information or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. The purpose of classifying a fugitive dust source as a low impact source is [~~so the programmatic permit fees can be calculated~~] to calculate the fees for a programmatic permit issued pursuant to 20.11.20 NMAC. For a low impact source, the applicable efficiency control factor for calculating fees [~~shall be~~] is 0.1.

[~~H.~~]**L.** **"Major source"** shall have the meaning defined in 40 CFR [~~71.2~~] 70.2.

[~~I.~~]**M.** **"Moderate impact source"** means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 50 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a moderate impact source based on professional judgment, sound technical information or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. The purpose of classifying a fugitive dust source as a moderate impact source is [~~so the programmatic permit fees can be calculated~~] to calculate the fees for a programmatic permit issued pursuant to 20.11.20 NMAC. For a moderate impact source, the applicable efficiency control factor for calculating fees [~~shall be~~] is 0.5.

[~~J.~~]**N.** **"No impact source"** means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 100 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a no impact source based on professional judgment, sound technical information or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. Land that is classified as a no impact source is not required to obtain a programmatic permit issued under 20.11.20 NMAC and is not required to pay a programmatic permit fee for land classified as a no impact source.

[~~**K. "Potential to emit" or "PTE"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of source to emit an air pollutant, including air pollution control equipment, restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if integral to the process or the limitation is federally enforceable through permit or regulation. Any limitation on emissions due to process design must be unchanging and unavoidable physical constraints. The potential-to-emit for nitrogen oxide shall be based on total oxides of nitrogen.~~]

O. "Proposed allowable emission rate" means the proposed fee pollutant emission rate that has been requested in a stationary source application submittal.

[~~L.~~]**P.** **"Qualified small business"** means a business that meets all of the following requirements:

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

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

(3) a source that [~~does not emit more than~~] emits less than 50 tons per year of any individual regulated air pollutant, or less than 75 tons per year of all regulated air pollutants combined; and

(4) [~~a facility~~] a source that is not a major source [~~of hazardous air pollutants~~] or major stationary source.

[~~M~~]**Q.** **"Regulated air pollutant"** means [~~the following~~]:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic [~~compounds~~] compound as defined in 40 CFR 51.100(s);

(2) any pollutant for which a national, state or local ambient air quality standard has been promulgated;

(3) any pollutant that is subject to [~~any~~] a standard established in Section 111 of the federal Clean Air Act;

(4) any Class I or II substance subject to [~~any~~] a standard established in Title VI of the federal Clean Air Act; [~~or~~] and

(5) any pollutant subject to [~~a~~] standards or requirements established in Section 112 of the federal Clean Air Act, including:

(a) any pollutant subject to requirements under Section 112(j) of the federal Clean Air Act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal Clean Air Act have been met, but only with respect to the individual source subject to the requirements.

[~~**N. "State air toxic review"** means a case-by-case permit application review of the potential emissions of toxic air pollutants listed in 20.2.72 NMAC, Construction Permits, Section 20.2.72.502 NMAC, Toxic Air Pollutants and Emissions.~~

~~**O. "Stationary source with de minimis emissions"** means a source as defined in 20.11.41 NMAC.~~]

R. "Technical permit revision" or "technical revision" means a revision to a permit issued pursuant to 20.11.41 NMAC:

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

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

(3) if the permittee wishes to impose a voluntary reduction of an emission limitation or retire an emission unit that was included as a specific permit condition;

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

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

(b) has the same or lower capacity and allowable emission rates;

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

(d) would not result in an increase of the allowable emission rate of any other equipment at the facility;

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

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

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

(h) does not emit a regulated air contaminant not previously emitted;

(5) in order to reduce the allowable emission rate of a unit or source, by incorporating terms and conditions in the permit, such as a cap on hours of operation, limitations on throughput of a specific product or products, or limitations on equipment capacity; and

(6) to incorporate a change in the permit solely involving the addition of air pollution control equipment or the substitution of a different type of air pollution control equipment to existing equipment if the requested addition or substitution will not result in an increase in the allowable emission rate.

S. "Submittal", when used as a noun, means a document listed in 20.11.2.2 NMAC, and, when used as a verb, means the act of delivering a document listed in 20.11.2.2 NMAC either to the department or filing the document with the board hearing clerk, as required by the applicable procedure.

[20.11.2.7 NMAC - Rp, 20 NMAC 11.02.I.7, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.8 SAVINGS CLAUSE: Any amendment to 20.11.2 NMAC that is filed with the state records center shall not affect actions pending for violation of a federal or state statute or regulation, a city or county ordinance, or [~~any~~] a board regulation. 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.

[20.11.2.8 NMAC - Rp, 20 NMAC 11.02.I.9, 7/1/2001; A, XX/XX/XX]

20.11.2.9 SEVERABILITY: If for any reason any section, paragraph, sentence, clause or word of 20.11.2 NMAC or federal, state or local standard incorporated [~~herein~~] in 20.11.2 NMAC is [~~for any reason held~~] determined to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of the remaining provisions of 20.11.2 NMAC.
[20.11.2.9 NMAC - Rp, 20 NMAC 11.02.I.10, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.10 DOCUMENTS: Documents cited and incorporated in 20.11.2 NMAC may be viewed at the Albuquerque Environmental Health Department, One Civic Plaza NW, 3rd Floor, [~~Room~~] Suite 3023, Albuquerque, NM 87102.
[20.11.2.10 NMAC - Rp, 20 NMAC 11.02.I.11, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.11 GENERAL PROVISIONS:

A. [~~At the time of application~~] Any person, including a federal, state or local governmental agency, who [~~files an application pursuant to 20.11.41 NMAC for an initial air quality application review and authority to proceed with construction or any person requesting to modify an existing air quality permit~~] submits a document described in Subsection A of 20.11.2.2 NMAC, shall pay the [~~permit~~] total fee required by 20.11.2 NMAC at the time the document is submitted.

B. [~~Any new or existing stationary source that meets the applicability requirements of 20.11.2 NMAC~~] Every person with a valid source registration or a permit issued pursuant to 20.11.20 NMAC, 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC or another board regulation, shall pay an annual emission fee as required by 20.11.2 NMAC, [~~based on the source's potential-to-emit~~] with the exception of fugitive dust control construction permits, which do not require payment of an annual emission fee. [~~Sources wishing to reduce their potential-to-emit may do so at any time through the provisions of 20.11.41 NMAC.~~]

[~~**C.** At the time of submittal, any person filing an application for a fugitive dust control permit with the department pursuant to 20.11.20 NMAC, *Fugitive Dust Control*, shall pay the applicable fee required by 20.11.2 NMAC.~~

~~**D.** At the time of notification, any person notifying the department pursuant to 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Source*, of the removal of regulated asbestos containing material shall pay the applicable fee required by 20.11.2 NMAC.~~]

[~~**E.**~~]**C.** No [~~application~~] notification or submittal will be reviewed or source registration or permit issued unless the owner or operator provides documentary proof satisfactory to the department that either all applicable fees have been paid as required by 20.11.2 NMAC or the owner or operator has been granted a variance [~~in accordance with~~] pursuant to 20.11.7 NMAC, *Variance Procedures*.

[~~**F.**~~]**D.** All [~~permit~~] fees required to be paid at the time of [~~application~~] notification or submittal shall be paid by check or money order payable to the "City of Albuquerque [~~, permits program (~~]Fund 242"[~~)~~] and either be delivered in person to the Albuquerque Environmental Health Department, [~~finance section,~~] 3rd floor, [~~room~~] Suite 3023 or Suite 3047, Albuquerque - Bernalillo County Government Center [~~(city hall)~~], south building, One Civic Plaza NW, Albuquerque, NM, or mailed to Attn: [~~Finance Section~~] Air Quality Division, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. The [~~finance section then~~] department shall [~~send~~] provide a receipt of payment to the applicant. [~~The applicant~~] The person delivering or filing a submittal shall attach a copy of the receipt of payment [~~issued by the finance section~~] to the [~~application~~] submittal as proof of payment. [~~The air quality division cannot accept direct payments.~~]

[~~**G.**~~]**E.** [~~No person required to pay an annual emission fee pursuant to 20.11.2 NMAC shall be in compliance with their permit unless all applicable fees are paid as required by 20.11.2 NMAC.~~]
Failure of the owner or operator of a source to pay an annual emission fee required by 20.11.2 NMAC, is a violation of 20.11.2 NMAC.

[~~**H.**~~]**F** No fee or portion of a fee required by 20.11.2 NMAC shall be refunded [~~without~~] unless the written approval of the [~~director~~] manager is obtained using the procedure required by 20.11.2.16 NMAC. [~~When determining the amount of the refund, the director may deduct a reasonable professional service fee to cover the costs of staff time involved in processing a permit or request.~~]

G. As required by 74-2-16 NMSA, all money received by the department pursuant to Section 20.11.2.13 NMAC, shall be deposited by the city of Albuquerque in the city's air quality permit fund ("fund 242").
[20.11.2.11 NMAC - N, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.12 [~~20.11.41 NMAC,~~] AIR QUALITY SOURCE REGISTRATION AND STATIONARY SOURCE PERMIT APPLICATION FEES; FEE CALCULATIONS AND PROCEDURES:

A. Air quality source registration and permits for minor [~~and area~~] sources: [~~sources applying~~] A person who submits an application for an air quality source registration pursuant to 20.11.40 NMAC or a permit pursuant to 20.11.41 NMAC shall pay the applicable [~~fee found~~] fees provided in Section 20.11.2.18 NMAC.

B. [~~Case-by-case air quality review prior to the~~] 20.11.41 NMAC, *Authority-to-Construct* permits required to be issued before construction of a stationary source whose applicability is determined by 'pound-per-hour' or 'ton-per-year' emissions:

(1) [~~Case-by-case air quality~~] Authority-to-construct application review fees shall be calculated based on the proposed source's [~~potential to-emit~~] proposed allowable emission rate for fee pollutants. Federally approved state implementation plan limitations may be used to determine a source's [~~potential to-emit~~] proposed allowable emission rate.

(2) Fugitive emissions shall be included in the application submittal to determine the source's [~~potential to-emit~~] proposed allowable emission rate.

(3) For sources that become subject to 20.11.42 NMAC, emissions from operations [~~determined by the department~~] that the department determines to be insignificant activities shall not be included in the calculation.

(4) For each fee pollutant, calculate the [~~potential to-emit~~] proposed allowable emission rate for each proposed emission unit to the nearest tenth of a ton. Total each of the fee pollutants from each proposed emission unit and express the value in tons per calendar year as a whole number. When rounding, if the number after the decimal point is less than 5, the whole number remains unchanged. If the number after the decimal point is 5 or greater, the whole number shall be rounded up to next whole number.

(5) The applicant shall determine the 20.11.41 NMAC application review fee [~~shall be determined by comparing the~~] by applying the proposed source's calculated [~~potential to-emit~~] proposed allowable emission rate for the single highest fee pollutant in tons per year [~~with the fee schedule found~~] to the applicable 20.11.41 NMAC application review fee provided in [~~Section~~] Subsection C of 20.11.2.18 NMAC.

(6) In addition to paying the application review [~~fees~~] fee, a [~~source proposing~~] person who proposes to construct [~~any~~] an emission unit or units that must comply with the provisions of 20.11.60 NMAC, *Permitting in Nonattainment Areas;* 20.11.61 NMAC, *Prevention of Significant Deterioration*; [~~20.11.62 NMAC, *Acid Rain,*~~] 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources;* or 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*, [~~also~~] shall also pay the applicable federal program review fees listed in [~~Section~~] Subsection D of 20.11.2.18 NMAC.

(7) Example: A [~~company~~] person proposes to build a facility with a NSPS boiler with a [~~potential to-emit~~] proposed allowable emission rate of greater than 100 tons per year of NOx. [~~From the fee schedule found in 20.11.2.18 NMAC, the company will be required to pay an initial air quality review fee of $5,000.00 with an addition federal program review fee of $1,000.00 for the NSPS boiler, for a total fee of $6,000.00.~~] The person shall determine and pay an application review fee of $7,500.00, as required by Subsection C of 20.11.2.18 NMAC and a federal program review fee of $1,000.00 for the NSPS boiler, as required by Subsection D of 20.11.2.18 NMAC, for a total fee of $8,500.00. The total [~~review~~] fee shall be submitted [~~at the time of~~] with the application [~~in accordance with the procedures found in~~] as required by Subsections [~~E and F~~] A, C, and D of 20.11.2.11 NMAC.

[~~(8) Sources submitting an application for the removal of regulated asbestos containing material pursuant to 20.11.64 NMAC shall comply with the provisions of 20.11.2.14 NMAC.~~]

C. Authority-to-construct permits required to be issued before construction of a stationary source whose applicability is not determined by pound-per-hour or ton-per-year emissions shall pay the applicable application fee provided in Subsection B of 20.11.2.18 NMAC.

[~~C.~~]D. Permit revisions, portable stationary source relocations and permit modifications:

(1) [~~At the time of application , any source proposing to modify an existing air quality permit shall pay the applicable fee found in Section 20.11.2.18 NMAC~~] The person requesting a permit revision, relocation or modification, as the terms are defined in the applicable board regulation, shall pay the fee required by the applicable provisions of 20.11.2.19 NMAC and 20.11.2.20 NMAC.

(2) [~~Any proposed modifications to an existing air quality permit that must comply with the provisions of 20.11.60 NMAC, *Permitting in Non-Attainment Areas*, 20.11.61 NMAC, *Prevention of Significant Deterioration*, 20.11.62 NMAC, *Acid Rain*, 20.11.63 NMAC, *New Source Performance Standards*~~

~~*for Stationary Sources*, or 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*, also requires the applicant to pay the applicable federal program review fee, but only with respect to the individual emission unit subject to the requirement~~] Payment of an applicable federal program review fee, provided in Subsection D of 20.11.2.18 NMAC is required only with respect to the individual emission unit that is subject to relocation or modification.

[~~**D.**~~]**E.** Qualified small businesses shall pay one-half of the [~~calculated case-by-case air quality review fees prior to adding any federal program review or state toxic review fees~~] application review fees for 20.11.41 NMAC, or other board regulation, and 100 % of all applicable federal program review fees.
[20.11.2.12 NMAC - Rp, 20 NMAC 11.02.II.1, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.13 ANNUAL EMISSION FEES; FEE CALCULATIONS AND PROCEDURES:

A. [~~By June 1 of each year, the department shall send each owner/operator a letter stating the fee amount owed. The owner/operator has 45 days from receipt of the letter to contact the department to request a correction to the records or submit a complete application within 45 days of receipt of the letter to modify an existing permit reducing the source's allowable emission rate.~~] By June 1 of each year, the department shall send each owner or operator with either a valid source registration pursuant to 20.11.40 NMAC, a fugitive dust control programmatic permit issued pursuant to 20.11.20 NMAC, or a permit issued pursuant to 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, or other board regulation, a letter stating the annual emission fee amount. If the owner or operator wishes to challenge or request a correction to the letter, then within 30 days after the owner or operator has received the letter from the department, the owner or operator shall deliver a written request to the department challenging the letter or requesting a correction to the letter. An owner or operator who submits a request to challenge or correct an error regarding the annual emission fee shall state in writing the basis upon which the fee was computed and shall follow the procedures set out in 20.11.2.16 NMAC.

B. [~~Starting August 1 of each year, each owner/operator shall be sent an official invoice by the city of Albuquerque stating the annual emission fee due, which the owner/operator shall pay consistent with the directions stated in the invoice. If the department does not send the owner/operator an annual letter or invoice stating the annual emission fee that is due, the owner/operator is not authorized to continue operating the source without having first paid the applicable annual emission fee.~~] Beginning August 1 of each year the city of Albuquerque shall send each owner or operator with either a valid source registration pursuant to 20.11.40 NMAC, a fugitive dust control programmatic permit issued pursuant to 20.11.20 NMAC, or a permit issued pursuant to 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, or other board regulation, an official invoice stating the annual emission fee due. The owner or operator shall pay the invoiced amount in full as directed in the invoice. All incorrect-fee challenges shall follow the appeal procedures set forth in 20.11.2.16 NMAC.

[~~**C.** As required by 74-2-16 NMSA, all monies received pursuant to Section 20.11.2.13 NMAC shall be deposited in the city of Albuquerque, permits program air quality permit fund (fund 242).~~] {Note: This section was moved to general provision as Subsection G of 20.11.2.11 NMAC.}

[~~**D.**~~]**C. Calculating annual emission fees:**

(1) For a fugitive dust control programmatic permit, the annual fee shall be calculated as required by Subsection J of 20.11.2.15 NMAC.

(2) For a source registration, the annual emission fee shall be the minimum annual emission fee as provided in 20.11.2.21NMAC.

[~~(1)~~](3) [~~For each source, the potential-to-emit~~] For all other permitted sources, the allowable emission rate for each fee pollutant shall be totaled and expressed in tons per calendar year as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to next whole number.

[~~(2)~~] The sum of each fee pollutant expressed in tons, shall be multiplied by the [~~appropriate~~] applicable annual emission fee [~~listed~~] rate provided in [~~Section 20.11.2.18 NMAC~~] Section 20.11.2.21 NMAC, then totaled to determine the annual emission fee due.

[~~(3) The source shall pay either the minimum annual emission fee or the calculated emission fee, whichever is greater~~].

[~~**E.**~~]**D.** [~~Sources wishing to reduce their potential-to-emit may apply for a permit or modify their existing permit consistent with the provisions of 20.11.41 NMAC.~~] An owner or operator who wishes to reduce

the annual emission fee for a source may apply for a modification to the existing permit and shall comply with the requirements of 20.11.20 NMAC, 20.11.41 NMAC, or 20.11.42 NMAC, as applicable.

E. Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the annual emission fee rates. The annual emission fee rates pursuant to Subsection A of 20.11.2.21 NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Annual emission fee adjustment amounts equal to or greater than fifty cents ($0.50) shall be rounded up to the next highest whole dollar. Annual emission fee adjustments totaling less than fifty cents ($0.50) shall be rounded down to the next lowest whole dollar. The department shall post the annual emission fee rates on the city of Albuquerque environmental health department air quality division website.

[20.11.2.13 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.14 FILING [~~AND INSPECTION~~] FEES FOR [~~THE~~] REMOVAL OF REGULATED ASBESTOS CONTAINING MATERIAL; FEE CALCULATIONS AND PROCEDURES:

A. [~~At the time of notification, a filing and inspection fee shall be paid by the owner/operator removing regulated asbestos containing material pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, and the federal regulations incorporated therein.~~] A filing fee of $21.00 per asbestos unit (AU), adjusted as required by Subsection D of 20.11.2.14 NMAC, shall be paid at the time notification is delivered to the department as required by 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources.*

B. The filing [~~and inspection~~] fee shall be calculated by multiplying the total number of asbestos units proposed to be removed, by the fee per asbestos unit (AU) [~~by the applicable fee in 20.11.2.18 NMAC.~~] provided in Subsection A of 20.11.2.14 NMAC. Equation 1 at Paragraph (1) of Subsection B of 20.11.2.14 NMAC shall be used to calculate the total asbestos units (AU) removed and filing fee amount due at the time the notification is delivered to the department:

(1) [~~Total Due~~] **Equation 1:** Amount due at time of filing = AU x AU fee = [(SF / 160) + (LF / 260) + (CF / 35)] x AU fee; [~~(Equation 1)~~]

[~~(2)~~] where: SF = square feet of asbestos containing material to be removed; LF = linear feet of asbestos containing material to be removed; CF = cubic feet of asbestos containing material to be removed; and AU fee = filing fee per asbestos unit.

[~~(3)~~](2) Example: A contractor proposes to remove 320 square feet (SF), 260 linear feet (LF) and 70 cubic feet (CF) of regulated asbestos containing material.

~~[(4) From the example above: SF=320; LF=260; CF=70; and AU= $21.00 (from Section 20.11.2.18 NMAC).~~

~~(5) From Equation 1:~~] Therefore, [(SF / 160) + (LF / 260) + (CF / 35)] x AU fee = [(320 / 160) + (260 / 260) + (70 / 35)] x $21.00 = [(2) + (1) + (2)] x $21.00 = 5 x $21.00 = $105.00

[~~(6) Result: The contractor must pay $105.00 at the time of notification.~~]

C. All fees due pursuant to Section 20.11.2.14 NMAC shall be paid [~~in accordance with the procedures found in~~] as required by Subsections A, C, and D, [~~E and F~~] of 20.11.2.11 NMAC, except that the word "applicant" shall be substituted for the phrase "owner/operator".

D. Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the asbestos unit fee. The asbestos unit fee established in Subsection A of 20.11.2.14 NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. The applicable consumer price index is the all-urban consumer price index published by the United States department of labor. Asbestos unit fee adjustment amounts equal to or greater than fifty cents ($0.50) shall be rounded up to the next highest whole dollar. Asbestos unit fee adjustments totaling less than fifty cents ($0.50) shall be rounded down to the next lowest whole dollar. The department shall post the asbestos unit fee rate on the city of Albuquerque environmental health department air quality division website.

E. If asbestos removal begins before both the notification and filing fee are delivered to the department as required by 20.11.2.14 NMAC, the person removing asbestos shall also pay a $100.00 late fee, to partially offset the additional related costs. In addition to the late fee, penalties may be assessed pursuant to the New Mexico Air Quality Control Act, Chapter 74, Article 2, New Mexico Statutes Annotated 1978.

F. An annual fee is not required for sources that are solely subject to 20.11.2.14 NMAC. {after 20.11.2.18.H NMAC}

[20.11.2.14 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.15 FEES FOR FUGITIVE DUST CONTROL PERMITS AND INSPECTIONS; FEE CALCULATIONS AND PROCEDURES:

A. [~~Each source required by 20.11.20 NMAC to obtain a fugitive dust control permit~~] Every person required to submit a permit application for a fugitive dust control construction permit as defined in 20.11.20.7 NMAC shall pay the total fee due at the time the permit application is submitted to the department.

B. The filing and review fee for a [~~non-programmatic~~] fugitive dust control construction permit for a project that is at least:

(1) [~~for projects that are~~] three-quarters of an acre or more, but less than 2 acres is $250.00;

(2) [~~for projects that are at least~~] 2 acres, but less than 5 acres is $350.00;

(3) [~~for projects that are at least~~] 5 acres, but less than 15 acres is $450.00; and

(4) [~~for projects that are at least~~] 15 acres or more is $550.00.

C. To calculate the [~~non-programmatic~~] fugitive dust control construction permit inspection fee, (which is in addition to the [~~above non-programmatic permit~~] filing and review fee required by Subsection B of 20.11.2.15 NMAC), multiply the acreage on which active operations or disturbance will occur by [~~$100.00~~] $115.00 per acre. The number of acres must be expressed as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to the next whole number. Rounding of acres shall occur before the fees are calculated.

D. All filing and review fees, and inspection fees required by 20.11.2.15 NMAC for a fugitive dust control construction permit shall be paid as required by Subsections A, C, and D of Section 20.11.2.11 NMAC.

E. If an application to obtain a fugitive dust control construction permit is submitted after active operations have commenced at the project location, a late fee of 50 percent of both the filing and review fee and the inspection fee shall be assessed to partially offset the additional related costs. In addition, penalties may be assessed pursuant to the New Mexico Air Quality Control Act, Chapter 74, Article 2 New Mexico Statutes Annotated 1978.

F. An annual fee is not required for sources that are solely subject to a fugitive dust control construction permit.

[~~**D.**~~]**G.** To calculate the [~~programmatic~~] fugitive dust control programmatic permit annual fee, multiply the acreage upon which routine maintenance or routine ongoing active operations will occur by the applicable emission control factor for a low impact source, moderate impact source, or high impact source as defined in Section 20.11.2.7 NMAC and then multiply by [~~$110.00~~] $127.00. [~~The air quality division (division) has~~] A "source classification guidebook" [~~that~~] is available through the department which includes nonbinding examples of how to classify a no impact source, low impact source, a moderate impact source and a high impact source. The number of acres must be expressed as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to the next whole number. Rounding of acres shall occur before the fees are calculated using the applicable emission control factor in Section 20.11.2.7 NMAC. No filing and review fee is required for a programmatic permit. The total annual programmatic permit fee is:

(1) the fee calculated for any low impact source acres; plus

(2) the fee calculated for any moderate impact source acres; plus

(3) the fee calculated for any high impact source acres. However, the maximum combined fee shall not exceed $10,000.00.

[~~**E.**~~](4). No fee shall be paid for "no impact source" acreage.

[~~**F.**~~]**H.** Example: The application for a programmatic permit includes a total of 20 acres, of which 2 acres are no impact source acres, 8 acres are low impact source acres, 5 acres are moderate impact source acres, and 5 acres are high impact source acres. To calculate the programmatic permit fee: 2 no impact source acres x 0 = 0 acres. 8 low impact source acres x 0.1 = 0.8 acre. 5 moderate impact acres x 0.5 = 2.5 acres. 5 high impact source acres x 0.9 = 4.5 acres. Therefore, 0 acres, plus 0.8 acre, plus 2.5 acres, plus 4.5 acres = a total of 7.8 acres. 7.8 acres x [~~$110.00~~] $127.00 per acre = a total programmatic permit fee of [~~$858.00~~] $991.00.

[~~**G.**~~]**I.** [~~The division will begin work on the programmatic permit program immediately after the adoption of 20.11.20 NMAC, Fees. All applicants shall obtain a programmatic permit by July 1, 2004, which is the date upon which all programmatic permits shall become effective during the first annual permit cycle. After June 30, 2005, the term of each programmatic permit will be from July 1 through the following June 30, and~~

~~annual programmatic permit fees shall be paid for each annual term.~~] When a programmatic permit application is submitted, the applicant may either ask the [~~division~~] department to determine the annual fee to be paid by the applicant, or the applicant may submit a proposed annual fee calculation. No later than [~~eight working~~] 10 business days after the [~~division~~] department has received the programmatic permit application and the proposed fee calculation, the [~~division~~] department shall notify the applicant in writing of the total fees due. The applicant and the department may agree in writing to extend the deadline for the department to issue the programmatic permit in order to attempt to resolve any pending issues, including any dispute over the source classification or fee calculation. [~~The total fees due must be paid to the department before the department will issue a programmatic permit.~~] A permit applicant may challenge the department's determination of source classification or annual programmatic fee calculation for a fugitive dust control permit by following the procedures [~~established by~~] provided in Section 20.11.20.25 NMAC.

J. The annual term of each programmatic permit will be from July 1 through the following June 30. Annual programmatic permit fees shall be paid for each additional annual term and shall be calculated in the same manner as the annual fee that is paid for a programmatic permit, as provided in Subsection G of 20.11.2.15 NMAC.

[~~H.~~]K. [~~All fees due pursuant to Section 20.11.2.15 NMAC shall be paid in accordance with the procedures found in Subsections C, E, and F of Section 20.11.2.11 NMAC~~] Annual fees required by Subsection J of Section 20.11.2.15 NMAC for a fugitive dust control programmatic permit shall be paid as required by Subsections B, D and E of Section 20.11.2.11 NMAC and Subsection J of 20.11.2.15 NMAC.

L. Beginning January 1, 2010, and every January 1 thereafter, an increase based on the consumer price index shall be added to each fugitive dust fee. The fugitive dust fee required by Subsections C and G of 20.11.2.15 NMAC shall be increased by an amount equal to the change in the consumer price index for the immediately-preceding year. The applicable consumer price index is the all-urban consumer price index published by the United States department of labor. Fugitive dust fee adjustments equal to or greater than fifty cents ($0.50) shall be rounded up to the next highest whole dollar. Fugitive dust fee adjustment amounts less than fifty cents ($0.50) shall be rounded down to the next lowest whole dollar. The department shall post the fugitive dust fee rates on the city of Albuquerque environmental health department air quality division website.

M. Demolition activities – fugitive dust control construction permit fee: Pursuant to 20.11.20.22 NMAC, no person shall demolish any building containing over 75,000 cubic feet of space without first submitting to the department a fugitive dust control construction permit application and fugitive dust control plan, accompanied by a filing and review fee that shall be the same as the filing and review fee required by Paragraph (1) of Subsection B of 20.11.2.15 NMAC, plus the fee charged for a 1-acre site as required by Subsection C of 20.11.2.15 NMAC. The total fugitive dust control construction fee shall be paid as required by Subsections D through F of 20.11.2.15 NMAC.

[20.11.2.15 NMAC - N, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.16 FEE ERRORS, CORRECTIONS AND REFUNDS:

A. [~~For permits other than fugitive dust control permits, within 30 days of receiving an invoice from the city, any person who does not agree with the amount due may request a review by the director to correct any errors or challenge the basis upon which the fee was computed. If the director has not received a written request or challenge within 30 days after the payor receives the invoice, the invoice shall be final.~~] Pursuant to 20.11.20.17 NMAC, *Filing Review and Inspection Fees,* the filing and review fees portion of the total permit application fee due at time of submittal for a fugitive dust control construction permit application are non-refundable.

B. [~~If fees are due at the time of application the payor must pay the required fee, and then request a review within 30 days of payment~~] For all review fees that are due at the time of submittal, the person submitting the document (payor) shall pay the required review fee in full. If the payor wishes to request correction of an alleged error or to challenge the basis of a fee calculation, then, within 30 days after the payor delivers the submittal and the fee, the payor shall deliver a written request for review by a manager of the division ("manager"). The written request shall be addressed as required by Subsection D of 20.11.2.16 NMAC. If the manager has not received a written request for review within 30 days of submittal, the fee shall be deemed final.

C. An owner or operator (payor) who does not agree with the annual fee amount due may deliver a written request to the manager asking for a correction of an alleged error or challenging the basis upon which the fee was computed. Requests must be delivered to the manager within 30 days of payor's receipt of an invoice from the city requiring payment of an annual fee. If the manager has not received a written request for

correction of an alleged error or a challenge to the basis of the fee calculation within 30 days after the payor receives the invoice, the invoice shall be deemed final, and immediately paid by the payor.

[~~C.~~] **D.** All written requests for review of a submittal or an annual fee shall be sent to: [~~Division~~] Manager, Air Quality Division, Albuquerque Environmental Health Department, Air Quality Division, P.O. Box 1293, Albuquerque, NM 87103, or hand-delivered to: Manager, Air Quality Division, Albuquerque Environmental Health Department, 3rd floor, Suite 3023 or 3047, Albuquerque - Bernalillo County Government Center, south building, One Civic Plaza NW, Albuquerque, NM.

[~~D.~~] **E.** The request for review of a submittal or annual fee [~~must~~] shall include:

(1) the name [~~of the owner/operator~~], address and telephone number of the payor;

(2) the dollar amount of the alleged error or challenged calculation; and

(3) a description of the alleged error or basis of the challenge and any other information the payor believes may support the claim.

[~~E.~~] **F.** Within [~~30~~] 45 days of receiving the request for review of the submittal or annual fee, the manager shall [~~audit~~] review the account and either:

(1) amend the invoice [~~or bill~~] and refund any money due the payor; [~~or~~]

(2) state that the invoice [~~or bill~~] is correct; or

(3) require additional fee payment if the manager determines that the payor delivered an insufficient fee to the department.

[~~F.~~] **G.** The [~~director~~] manager may confer with the payor to obtain additional information during the [~~audit~~] review period.

[~~G.~~] **H.** Within 10 [~~working days of the~~] business days after the manager completes the manager's [~~decision concerning the~~] review, the manager's decision shall be sent by certified mail to the address provided by the payor.

[~~H.~~] **I.** If the manager determines a refund is [~~due~~] owed to the payor, the department shall refund [~~any~~] all money due consistent with the policies and procedures of the city of Albuquerque. If a refund is owed, the manager may deduct a reasonable professional service fee to cover the costs of staff time involved in processing the review. However, if the manager determines the department or the city made the error, no deduction shall be made from the amount refunded.

[~~I.~~] **J.** [~~The director's decision may be appealed to the board~~] As authorized by NMSA Section 74-2-9, the manager's decision may be appealed to the board using the procedures described in 20.11.81 NMAC, *Adjudicatory Procedures – Air Quality Control Board.*

[20.11.2.16 NMAC - N, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.17 FAILURE TO PAY; LATE FEE:

A. [~~It shall be a violation of 20.11.2 NMAC to fail to pay any fee required by 20.11.2 NMAC, a director's decision or a board regulation.~~] Failure to pay any fee required by 20.11.2 NMAC, a manager's decision made pursuant to 20.11.2.16 NMAC, or a board regulation is a violation of 20.11.2 NMAC.

B. All incorrect-fee challenges shall follow the appeal procedures set forth in 20.11.2.16 NMAC. Stating an invoice is in error shall not be a defense to violation of Section 20.11.2.17 NMAC.

C. [~~In addition to paying past due fees, the payor shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with the section of the Internal Revenue Code relating to computation of interest on underpayment of federal taxes~~]. Every person who is required by 20.11.2 NMAC to pay an annual emission fee but who does not submit payment in full as directed in the invoice shall pay an additional 50 percent of the annual emission fee, plus interest, as a late fee to partially offset related costs. Interest shall be computed in accordance with the section of the internal revenue code relating to computing interest on underpayment of federal taxes.

D. In addition to paying a late fee for late delivery of an annual emission fee, the payor may be required to pay a penalty, as authorized by the New Mexico Air Quality Control Act, Chapter 74, Article 2, New Mexico Statutes Annotated 1978.

[20.11.2.17 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04; A, XX/XX/XX]

20.11.2.18 [~~FEE SCHEDULE~~] REVIEW FEES:

A. [~~**Annual emission fees:** Sources issued a registration or permit pursuant to 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, or 20.11.61 NMAC shall pay a minimum annual emission fee of $150.00 or the annual emission fee calculated consistent with Section 20.11.2.13 NMAC, which ever is~~

~~greater. The following fee pollutant rates shall be used in calculating the annual emission fee, unless otherwise listed:~~

~~(1) non-hazardous fee pollutants: $31.00 per ton;~~

~~(2) hazardous fee pollutants (non-major sources): $31.00 per ton;~~

~~(3) hazardous fee pollutants (major sources): $250.00 per ton; and~~

~~(4) annual emission fees for specific source categories:~~

~~(a) auto body repair and painting: $150.00;~~

~~(b) chromium electroplating: $150.00;~~

~~(c) degreasers using organic solvents:~~

~~(i) non-halogenated solvents using less than 2,200 gallons of any one solvent-containing material or 5,400 gallons or more of any combination of solvent-containing materials: $150.00; and~~

~~(ii) halogenated solvents using less than 1,200 gallons of any one solvent-containing material or 2,900 gallons or more of any combination of solvent-containing materials: $150.00;~~

~~(d) dry cleaners (non-major): $150.00;~~

~~(e) emergency generators: $150.00 or $31.00 per ton, whichever is greater;~~

~~(f) gasoline service and fleet stations: $250 or $31.00 per ton, which ever is greater;~~

~~(g) stand alone natural gas or distillate fueled fired boilers less than 10 million BTU used exclusively for residential, commercial or institutional heating and hot water: no charge;~~

~~(h) printing, publishing and packaging operations:~~

~~(i) sheetfed (nonheatset) offset lithography using less than 7,125 gallons of clean solvent and fountain solution additives per year: $150.00;~~

~~(ii) nonheatset web offset lithography using less than 7,125 gallons of solvent and fountain solution additive per year: $150.00;~~

~~(iii) heatset web offset lithography using less than 50,000 pounds of ink, cleaning solvent, and fountain solution additives: $150.00;~~

~~(iv) screen printing using less than 7,125 gallons of total solvent used including solvent-based inks, cleaning solvents, adhesives and coatings: $150.00;~~

~~(v) flexography (water-based or UV-cured inks, coating and adhesives) using less than 200,000 pounds total of inks, coatings and adhesives: $150.00;~~

~~(i) soil and/or water remediation operations: $150.00; and~~

~~(j) stationary sources with de minimis emissions: no charge.~~]

Source registration review fees: A person with a stationary source that is required by 20.11.40 NMAC to submit a source registration shall pay a registration review fee of $500.00 when the registration application is delivered to the department.

B. [~~**Air quality application review fees for sources requiring permits pursuant to 20.11.40 NMAC or 20.11.41 NMAC:**~~

~~(1) auto body repair and painting: $500.00;~~

~~(2) dry cleaners: $500.00;~~

~~(3) emergency generators: $500.00;~~

~~(4) generic coating and abrasive operations: $500.00;~~

~~(5) other fueling facilities receiving fuel by truck or rail (non-NSPS): $1000.00;~~

~~(6) non-NSPS boilers (greater than 10 million BTU): $500.00;~~

~~(7) printing and packaging operations: $500.00;~~

~~(8) retail and fleet gasoline service stations: $500.00; and~~

~~(9) soil/water remediation systems: $1000.00.~~]

Permit application review fees for stationary sources that require permits pursuant to 20.11.41 NMAC or other board regulation, and that are not subject to Subsection C of 20.11.2.18 NMAC: $1,000.00.

C. [~~Case-by-case air quality~~ ~~**application review fees for sources**~~ ~~requiring permits pursuant to 20.11.40 NMAC or~~ ~~**20.11.41 (based on a source's potential**~~ ~~to emit for the single highest pollutant):~~] **Ton-per-year application review fees for stationary sources that require permits pursuant to 20.11.41 NMAC or other board regulation, and whose applicability is based on the source's pound per hour or ton per year emissions**: A person with a stationary source that is required by Subsection C of 20.11.2.18 NMAC to obtain a permit and whose applicability is determined by pound per hour or ton per year emissions shall pay the following application review fee, based on the source's ton per year proposed allowable emission rate for the single highest fee pollutant:

(1) proposed sources with a [~~potential to emit~~] proposed allowable emission rate equal to or greater than one ton per year and less than five tons per year: [~~$500.00~~] $750.00;

(2) proposed sources with a [~~potential to emit~~] proposed allowable emission rate equal to or greater than 5 tons per year and less than 25 tons per year: [~~$1,000.00~~] $1,500.00;

(3) proposed sources with a [~~potential to emit~~] proposed allowable emission rate equal to or greater than 25 tons per year and less than 50 tons per year: [~~$2,000.00~~] $3,000.00;

(4) proposed sources with a [~~potential to emit~~] proposed allowable emission rate equal to or greater than 50 tons per year and less than 75 tons per year: [~~$3,000.00~~]$4,500.00;

(5) proposed sources with a [~~potential to emit~~] proposed allowable emission rate equal to or greater than 75 tons per year and less than 100 tons per year: [~~$4,000.00~~] $6,000.00; and

(6) proposed sources with a [~~potential to emit~~] proposed allowable emission rate equal to or greater than 100 tons per year: [~~$5,000.00~~] $7,500.00.

D. Federal program [~~and state toxic air pollutant application~~] review fees due in addition to the [~~air quality~~] stationary source permit application review fees: A person with a stationary source that is required by 20.11.41 to apply for a permit and pay a review fee pursuant to Subsection B or Subsection C of 20.11.2.18 NMAC shall also pay the federal program review fee for each applicable federal program standard or review listed in Paragraphs (1) through (5) of Subsection D of 20.11.2.18 NMAC:

(1) for review of each 40 CFR 60 [~~standards~~] standard: $1,000.00;

(2) for review of each 40 CFR 61 [~~standards~~] standard: $1,000.00;

(3) for review of each 40 CFR 63 [~~standards~~] promulgated standard: $1000.00;

[~~(a) promulgated standards: $2,000.00;~~]

[~~(b)~~] (4) for each case-by-case 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*, maximum achievable control technology (MACT) review: $10,000.00; and

[~~(4)~~] (5) [~~PSD/non-attainment~~] for each 20.11.61 NMAC, *Prevention of Significant Deterioration*, and 20.11.60 NMAC, *Permitting in Nonattainment Areas*, review: $5,000.00.

[~~(5) acid rain review: $5,000.00; and~~

~~(6) state toxic air pollutant review: $500.00~~]

E. Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the application review fees. The application review fees established in Subsection A through D of 20.11.2.18 NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Application review fees adjustments equal to or greater than fifty cents ($0.50) shall be rounded up to the next highest whole dollar. Application review fees adjustments totaling less than fifty cents ($0.50) shall be rounded down to the next lowest whole dollar. The department shall post the application review fees on the city of Albuquerque environmental health department air quality division website.

[~~**E. Permit modifications:**~~

~~(1) P2 modifications: no charge;~~

~~(2) minor/flexible permit modifications: $1,000.00; and~~

~~(3) major modifications: $5,000.00;~~

~~**F. Portable source relocation fee:** $250.00;~~

~~**G. Administrative modifications to existing permit:** $100.00;~~

~~**H. Asbestos unit (AU):** $21.00;~~

~~**I. Administrative fees:**~~

~~(1) Professional services fee: $75.00 per staff hour;~~

~~(2) Photocopying and other copies of public records: as provided by the New Mexico Inspection of Public Records Act and by the applicable city of Albuquerque ordinance and administrative instruction number 1-7.~~

~~(3) Regulation compilation: $20.00; and~~

~~(4) Public records research fee: $50.00 per staff hour. However, the charge for copying public records shall not include a separate charge for staff time for locating and copying the documents.~~

~~**J. Variance request fees:** any person who petitions for a variance shall pay a fee of $1,500.00, unless the fee is determined by the board at a hearing to impose an undue economic burden on the petitioner.~~

~~**K. Board hearing filing fees:** Any person who requests a hearing before the board to challenge the issuance of a permit, the terms of a permit or permit modification, the department's refusal to issue a permit, or the department's determination of a source classification or fee calculation for a fugitive dust control permit shall be charged a filing fee of $125.00.~~]

[20.11.2.18 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04; A, 12/16/06; A, XX/XX/XX]

20.11.2.19 APPLICATION REVIEW FEES FOR MODIFICATION OF EXISTING PERMITS:

A. Modifications: A person who submits an application for a proposed modification to an existing stationary source permit shall pay either $1000.00 if subject to Subsection B of 20.11.2.18 NMAC, or the applicable fee listed in Paragraphs (1)-(6) of Subsection A of 20.11.2.19 NMAC based on the source's ton-per-year proposed allowable emission rate for the single highest fee pollutant: The applicant shall round the calculations as described in Paragraph 4 of Subsection B of 20.11.2.12 NMAC.

(1) proposed sources with a proposed allowable emission rate equal to or greater than one ton per year and less than five tons per year: $750.00;

(2) proposed sources with a proposed allowable emission rate equal to or greater than 5 tons per year and less than 25 tons per year: $1,500.00;

(3) proposed sources with a proposed allowable emission rate equal to or greater than 25 tons per year and less than 50 tons per year: $3,000.00;

(4) proposed sources with a proposed allowable emission rate equal to or greater than 50 tons per year and less than 75 tons per year: $4,500.00;

(5) proposed sources with a proposed allowable emission rate equal to or greater than 75 tons per year and less than 100 tons per year: $6,000.00; and

(6) proposed sources with a proposed allowable emission rate equal to or greater than 100 tons per year: $7,500.00.

B. Major modifications: A person, who submits an application for a proposed modification to an existing stationary source permit, shall pay the following fee as applicable in addition to the application review fee required by Subsection A of 20.11.2.19 NMAC. The applicant shall round the calculations as described in Paragraph 4 of Subsection B of 20.11.2.12 NMAC.

(1) 20.11.60 NMAC, *Permitting in Non-Attainment Areas*, major modification: $5,000.00; and

(2) 20.11.61 NMAC, *Prevention of Significant Deterioration*, major modification: $5,000.00.

C. Federal program review fees for modification of an existing permit: A person proposing a modification to an existing stationary source permit shall pay a review fee pursuant to Subsection A or Subsection B of 20.11.2.19 NMAC, and shall also pay the federal program review fee for each applicable federal program standard or review listed in Paragraphs (1) through (5) of Subsection C of 20.11.2.19 NMAC, if the federal program review is triggered by the modification:

(1) for review of each 40 CFR 60 standard: $1,000.00;

(2) for review of each 40 CFR 61 standard: $1,000.00;

(3) for review of each 40 CFR 63 standards promulgated standard: $1000.00;

(4) for each case-by-case 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*, maximum achievable control technology (MACT) review: $10,000.00; and

(5) for each 20.11.61 NMAC, *Prevention of Significant Deterioration*, and 20.11.60 NMAC, *Permitting in Nonattainment Areas*, review: $5,000.00.

D. Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the application review fees required by 20.11.2.19 NMAC. The application review fees established by Subsections A, B and C of 20.11.2.19 NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Application review fee adjustments equal to or greater than fifty cents ($0.50) shall be rounded up to the next highest whole dollar. Application review fee adjustments totaling less than fifty cents ($0.50) shall be rounded down to the next lowest whole dollar. The department shall post the application review fee rates on the city of Albuquerque environmental health department air quality division website. {after 20.11.2.18.E NMAC}

[XXXXXXXXXXX; N, XX/XX/XX]

20.11.2.20 ADMINISTRATIVE AND TECHNICAL REVISION APPLICATION FEES; PORTABLE STATIONARY SOURCE RELOCATION FEES:

A. Revision fees:

(1) administrative revisions to permits issued pursuant to 20.11.41 NMAC: $250.00;

(2) technical revisions to permits issued pursuant to 20.11.41 NMAC: $500.00. {after 20.11.2.18.G NMAC}

B. Portable stationary source relocation fees:

(1) no new air dispersion modeling required: $500.00

(2) new air dispersion modeling required: $750.00. {after 20.11.2.18.F NMAC}
[XXXXXXXXXXX; N, XX/XX/XX]

20.11.2.21 ANNUAL EMISSIONS FEES AND RATES FOR STATIONARY SOURCES:

A. Source registration: $185.00.

B. Permitted source: Sources issued a permit pursuant to 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC or other board regulation, shall pay a minimum annual emission fee of $185.00 or $44.00 per ton, whichever is greater. The annual emission fee shall be calculated as required by Subsection C of 20.11.2.13 NMAC.

C. Hazardous fee pollutants (major sources): $308.00 per ton.

D. Stationary sources that require permits pursuant to 20.11.41 NMAC or other board regulation, and that are not subject to Subsection C of 20.11.2.18 NMAC shall pay an annual emission fee of $185.00.

E. The following sources shall pay a minimum annual emission fee of $308.00 or a fee of $44.00 per ton whichever is greater, with the annual emission fee calculated as required by Subsection C of 20.11.2.13 NMAC:

(1) emergency generators; and

(2) gasoline service and fleet stations.

F. Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the annual emission fee and rates required by 20.11.2.21 NMAC. The annual emission fees and rates pursuant to 20.11.2.21NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Annual emission fee and rate adjustments equal to or greater than fifty cents ($0.50) shall be rounded up to the next highest whole dollar. Annual emission fee and rate adjustments totaling less than fifty cents ($0.50) shall be rounded down to the next lowest whole dollar. The department shall post the annual emission fees and rates on the city of Albuquerque environmental health department air quality division website. {after 20.11.2.18.A NMAC}
[XXXXXXXXXXX; N, XX/XX/XX]

20.11.2.22 MISCELLANEOUS FEES -- ADMINISTRATIVE FEES; VARIANCE REQUEST FEES; BOARD HEARING FILING FEES.

A. Administrative fees:

(1) Professional services fee: $92.00 per staff hour;

(2) Public records research fee: $92.00 per staff hour. However, the charge for copying public records shall not include a separate charge for staff time for locating and copying documents or for determining whether documents are exempt from inspection and copying.

(3) Air quality impact analysis fee: $100.00. This fee shall be paid by every person who is required to obtain an air quality impact analysis pursuant to the revised ordinances of Albuquerque 1994, Section 14-16-3-14, *Air Quality Impact Regulations.*

(4) Photocopying and other copies of public records: as provided by the New Mexico Inspection of Public Records Act and by the applicable city of Albuquerque ordinance and city administrative instruction number 1-7. {after 20.11.2.18.I NMAC}

B. Variance request fees: Every person who petitions for a variance shall pay a fee of $1500.00, unless the board determines at a hearing that the variance fee imposes an undue economic burden on the petitioner. {after 20.11.2.18.J NMAC}

C. Board hearing filing fees: Every person who requests a hearing before the board shall pay a filing fee of $125.00, which shall be delivered to the board hearing clerk with the petition or other document that requests a hearing before the board. However, the hearing filing fee does not apply to requests for rulemaking hearings or to board hearings regarding decisions made by the Albuquerque-Bernalillo County vehicle pollution management program manager or designee regarding the proposed suspension or revocation of an air car station certification or air car inspector certification. {after 20.11.2.18.K NMAC}
[XXXXXXXXXXX; N, XX/XX/XX]

HISTORY of 20.11.2 NMAC:

Pre-NMAC history:

Material in the part was derived from that previously filed with the commission of public records – state records center and archives under:

Resolution 1, Air Pollution Control Regulations of the Albuquerque - Bernalillo County Air Quality Control Board, filed 8-06-71;
Regulation 1, Air Pollution Control Regulations, filed 6-06-73;
Regulation 1, Air Pollution Control Regulations, filed 7-19-73;
Regulation 1, Air Pollution Control Regulations, filed 3-21-77;
Regulation No. 21, Permit Fees, filed 3-24-82;
Regulation No. 21, Permit Fees, filed 8-19-83;
Regulation No. 21, Permit Fees, filed 3-01-94;
Regulation No. 21, Permit Fees, filed 12-16-94.

History of repealed material: 20 NMAC 11.02, Permit Fees, filed 10-27-95.

Other history: Regulation No. 21, Permit Fees, filed 12-16-94 renumbered and reformatted to 20 NMAC 11.02, Permit Fees, filed 10-27-95;
20 NMAC 11.02, Permit Fees, filed 10-27-95 replaced by 20.11.2 NMAC, Permit Fees, effective 7/1/2001.