TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 42 OPERATING PERMITS

20.11.42.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.
[3/1/94. . .12/1/95; 20.11.42.1 NMAC - Rn, 20 NMAC 11.42.I.1, 10/1/02; A, 8/10/09]

20.11.42.2 SCOPE:

A. 20.11.42 NMAC sources: Operating permits must be obtained from the department for the following sources:

(1) any major source;

(2) any source, including an area source, subject to a standard or other requirement promulgated under Section 111 - *Standards of Performance for New Stationary Sources*, or Section 112 - *National Emission Standards for Hazardous Air Pollutants*, of the federal act, but not including any source which:

(a) is exempted under Subparagraph (b), of Paragraph (1), of Subsection C of 20.11.42.2 NMAC; **or**

(b) would be required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r),*Prevention of Accidental Releases* of the federal act;

(3) any acid rain source; and

(4) any source in a source category so designated by the administrator, in whole or in part, by regulation, after notice and comment.

B. Requirement for a permit:

(1) A 20.11.42 NMAC source may operate after the time that it is required to submit a timely and complete application under 20.11.42 NMAC only if:

(a) the source is in compliance with an operating permit issued by the department or EPA; or

(b) a timely permit (including permit renewal) application has been submitted consistent with Subsection A of 20.11.42.12 NMAC; the ability to operate under these circumstances shall cease if the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application.

(2) Revocation or termination of a permit by the department terminates the permittee's right to operate.

(3) The submittal of a complete operating permit application shall not protect any source from any applicable requirement, including any requirement that the source have a pre-construction permit under Title I of the federal act or board regulations.

C. Source category exemptions and deferrals:

(1) **The following source categories are exempted from the obligation to obtain an operating permit:**

(a) all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - *Standards of Performance for New Residential Wood Heaters*;

(b) all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - *National Emission Standard for Hazardous Air Pollutants for Asbestos*, Section 61.145, *Standard for Demolition and Renovation*;

(c) except as required under Section 20.11.42.14 NMAC, any source that would be required to obtain a permit solely because of emissions of radionuclides; and

(d) any source in a source category exempted by the administrator, by regulation, after notice and comment.

(2) Non-major sources, including those subject to Sections 111 or 112 of the federal act are exempt from the obligation to obtain a 20.11.42 NMAC permit until the administrator completes a rulemaking requiring such sources to obtain operating permits.

(3) Any source exempted from the requirement to obtain an operating permit may opt to apply for a permit under 20.11.42 NMAC.

D. Reserved.

E. Indian tribal jurisdiction: The requirements of 20.11.42 NMAC do not apply to sources within Indian tribal jurisdiction. For the operation of sources in that jurisdiction, the applicant shall make such applications to the tribal authority or to the administrator, as appropriate.

[3/1/94. . .12/1/95; 20.11.42.2 NMAC - Rn, 20 NMAC 11.42.I.2, 10/1/02; A, 8/10/09]

20.11.42.3 STATUTORY AUTHORITY: 20.11.42 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.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.
[3/1/94. . .12/1/95; 20.11.42.3 NMAC - Rn, 20 NMAC 11.42.I.3, 10/1/02]

20.11.42.4 DURATION: Permanent.
[12/1/95; 20.11.42.4 NMAC - Rn, 20 NMAC 11.42.I.4, 10/1/02]

20.11.42.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.
[3/1/94; 20.11.42.5 NMAC - Rn, 20 NMAC 11.42.I.5, 10/1/02; A, 8/10/09]
[The effective date for interim approval of the operating permit program for Albuquerque-Bernalillo County, by the administrator, is March 13, 1995]

20.11.42.6 OBJECTIVE: To assure that major air pollution sources within Bernalillo county obtain an operating permit setting forth minimum requirements and conditions of operation pursuant to Title V of the Clean Air Act Amendments of 1990 (42 U.S.C. 7401, et seq.).
[3/1/94. . .12/1/95; 20.11.42.6 NMAC - Rn, 20 NMAC 11.42.I.6, 10/1/02; A, 8/10/09]

20.11.42.7 DEFINITIONS: In addition to the definitions in 20.11.42.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.42 NMAC shall govern.

A. "Acid rain source" has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV.

B. "Affected programs" means the state of New Mexico and Indian tribes and pueblos that are within 50 miles of the source.

C. "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter, which is emitted into or otherwise, enters the ambient air. Such term includes any precursors to the formation of any air pollutant; to the extent the administrator has identified such precursor or precursors for the purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N_2), [~~carbon dioxide (CO_2),~~] oxygen (O_2), [~~methane~~] and ethane. {NMED, Draft 20.2.70 NMAC}

D. "Air pollution control equipment" means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

E. "Applicable requirement" means all of the following, as they apply to emissions units at a 20.11.42 NMAC source (including requirements that have been promulgated or approved by the board or EPA through rulemaking at the time of permit issuance but have future-effective compliance dates):

(1) any standard or other requirement provided for in the New Mexico state implementation plan approved by EPA, or promulgated by EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52;

(2) any term or condition of any pre-construction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent;

(3) any standard or other requirement under Section 111 of the federal act, including Section 111(d);

(4) any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act;

(5) any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder;

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

(7) any standard or other requirement under Section 126(a)(1) and (c) of the federal act;

(8) any standard or other requirement governing solid waste incineration under Section 129 of the federal act;

(9) any standard or other requirement for consumer and commercial products, under Section 183(e) of the federal act;

(10) any standard or other requirement for tank vessels under Section 183(f) of the federal act;

(11) any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the federal act;

(12) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit;

(13) any national ambient air quality standard, or any increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act; and

(14) any regulation adopted by the board in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-5.B NMSA 1978.

F. "Department" means the Albuquerque environmental health department or its successor agency or authority, as represented by the department director or his or her designee.

G. "Draft permit" means a version of a permit, for which the department offers for public participation under Subsection B of 20.11.42.13 NMAC or affected program review under Subsection C of 20.11.42.13 NMAC.

H. "Emission limitation" means a requirement established by EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

I. "Emissions allowable under the permit" means:

(1) any federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emission limit (including a work practice standard); or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

J. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

K. "Federal act" means the federal Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.

L. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

M. "Final permit" means the version of an operating permit issued by the department that has met all review requirements of Section 20.11.42.13 NMAC.

N. "Fugitive emissions" are those emissions, which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

O. "General permit" means an operating permit that meets the requirements of Subsection D of 20.11.42.12 NMAC.

P. "Greenhouse gases" or "GHGs" means the air pollutant defined in § 86.1818–12(a) of Chapter I of Title 40 of the CFR, as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. {6/3/10 FR}

[~~P.~~] Q. "Hazardous air pollutant" means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

[~~Q.~~] R. "Insignificant activities" means those activities listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

[~~R.~~] S. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the *standard industrial classification manual, 1987*, and that is described in paragraphs (1), (2), or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as:

(a) for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the federal act, 25 tons per year or more of any combination of such hazardous air pollutants, or such lesser quantity as the administrator may establish by rule; notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) for radionuclides, "major source" shall have the meaning specified by the administrator by rule.

(2) A major stationary source of air pollutants, as defined in Section 302 of the act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the act, unless the source belongs to one of the following categories of stationary sources: {6/3/10 FR}

(a) coal cleaning plants (with thermal dryers);

(b) kraft pulp mills;

(c) portland cement plants;

(d) primary zinc smelters;

(e) iron and steel mills;

(f) primary aluminum ore reduction plants;

(g) primary copper smelters;

(h) municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) hydrofluoric, sulfuric, or nitric acid plants;

(j) petroleum refineries;

(k) lime plants;

(l) phosphate rock processing plants;

(m) coke oven batteries;

(n) sulfur recovery plants;

(o) carbon black plants (furnace process);

(p) primary lead smelters;

(q) fuel conversion plant;

(r) sintering plants;

(s) secondary metal production plants;

(t) chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) taconite ore processing plants;

(x) glass fiber processing plants;

(y) charcoal production plants;

(z) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(aa) any other stationary source category, which as of August 7, 1980, is being regulated under Section 111 or 112 of the federal act.

(3) A major stationary source as defined in Part D of Title I of the federal act, including:

(a) for ozone non-attainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate", 50 tons per year or more in areas classified as "serious", 25 tons per year or more in areas classified as "severe", and 10 tons per year or more in areas classified as "extreme"; except that the references in Paragraph (3) of Subsection **[~~R~~] S** of 20.11.42.7 NMAC to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(c) for carbon monoxide non-attainment areas:

(i) that are classified as "serious"; and

(ii) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide; and

(d) for particulate matter (PM_{10}) non-attainment areas classified as "serious", sources with the potential to emit 70 tons per year or more of PM_{10}.

[~~S.~~] T. "Operating permit" or "permit" means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to 20.11.42 NMAC.

[~~T.~~] U. "Operator" means the person(s) responsible for the overall operation of a facility.

[~~U.~~] V. "Owner" means the person(s) who owns a facility or part of a facility.

[~~**V.** Reserved.~~]

W. "Permit modification" means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in Subsection E of 20.11.42.13 NMAC.

X. "Permittee" means the owner, operator or responsible official at a permitted 20.11.42 NMAC source, as identified in any permit application or modification.

Y. "Person" includes any individual, partnership, corporation, association, state or political subdivision of a state, and any agency, department or instrumentality of the United States, and any of their officers, agents or employees.

Z. "Potential to emit" 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 a source to emit an air pollutant, including air pollution control equipment and 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 the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

AA. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with Subsection C of 20.11.42.13 NMAC.

BB. "Regulated air pollutant" means the following:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

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

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act; [~~or~~]

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including:

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act, any pollutant for which a subject source would be a major source shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement; or

(6) any other pollutant "subject to regulation" as defined in Subsection II of 20.11.42.7 NMAC.

{NMED, Draft 20.2.70 NMAC}

CC. "Renewal" means the process by which a permit is reissued at the end of its term.

DD. "Responsible official" means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(b) the delegation of authority to such representatives is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of 20.11.42 NMAC, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

(4) For an acid rain source:

(a) the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned; and

(b) the designated representative for any other purposes under 40 CFR, Part 70.

EE. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

FF. "Shutdown" means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose.

GG. "Startup" means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

HH. "Stationary source" or "source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

II. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "Greenhouse gases" (GHGs), shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO_2 equivalent emissions.

(2) The term "tpy CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to Subpart A of 40 CFR Part 98, *Global Warming Potentials*, and summing the resultant value for each to compute a tpy CO_2e. {6/3/10 FR}

[~~II~~] **JJ. "Subsidiary"** means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

[~~JJ~~] **KK. "Title I modification"** means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is subject to the pre-construction regulations promulgated under Parts C and D of the federal act.

[3/1/94. . .12/1/95; 20.11.42.7 NMAC - Rn, 20 NMAC 11.42.I.7, 10/1/02; A, 2/1/03; A, 8/10/09]

20.11.42.8 VARIANCES: In accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-8 NMSA 1978, applicants and permittee's may seek a variance from the non-federally enforceable provisions of 20.11.42 NMAC.

[3/1/94. . .12/1/95; 20.11.42.8 NMAC - Rn, 20 NMAC 11.42.I.8, 10/1/02; A, 8/10/09]

20.11.42.9 SAVINGS CLAUSE: Any amendment to 20.11.42 NMAC, which is filed, with the state records center shall not affect actions pending for violation of a city or county ordinance, or 20.11.42 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed.

[12/16/94. . .12/1/95; 20.11.42.9 NMAC - Rn, 20 NMAC 11.42.I.9, 10/1/02; A, 8/10/09]

20.11.42.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of 20.11.42 NMAC is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.42 NMAC.

[12/16/94. . .12/1/95; 20.11.42.10 NMAC - Rn, 20 NMAC 11.42.I.10, 10/1/02; A, 8/10/09]

20.11.42.11 DOCUMENTS: Documents incorporated and cited in 20.11.42 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.42.11 NMAC - Rn, 20 NMAC 11.42.I.11 & A, 10/1/02; A, 8/10/09]

20.11.42.12 PERMIT REQUIREMENTS:

A. Permit applications:

(1) **Duty to apply.** For each 20.11.42 NMAC source, the owner or operator shall submit a timely and complete permit application in accordance with 20.11.42 NMAC.

(2) **Timely application.**

(a) **A timely application is:**

(i) for first time applications, one that is submitted within 12 months after the source commences operation as a 20.11.42 NMAC source, [~~or as established in the transition schedule outlined in Subparagraph (b), of Paragraph (2), of Subsection A of 20.11.42.12 NMAC below~~]; {NMED, Draft 20.2.70 NMAC re: 40 CFR 70.5}

(ii) for purposes of permit renewal, one that is submitted at least 12 months prior to the date of permit expiration;

(iii) for the acid rain portion of permit applications for initial phase II acid rain sources under Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(b) [~~**Transition schedule.** A timely application for a 20.11.42 NMAC source which is in operation on or before the effective date of 20.11.42 NMAC is one that is submitted:~~

~~(i) within six months after the effective date for storage of gasoline in stationary containers having greater than 40,000 gallons capacity and loading of gasoline from loading racks having a 30-day throughput greater than 600,000 gallons;~~

~~(ii) within 12 months after the effective date for other sources.~~] Reserved. {Previously removed by NMED, effective 9/6/06, re: 40 CFR 70.5}

(3) **Completeness of application.**

(a) To be deemed complete, an application must provide all information required pursuant to Paragraph (4), of Subsection A of 20.11.42.12 NMAC, except that applications for permit modifications need supply such information only if it is related to the proposed change.

(b) If, while processing an application, regardless of whether it has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(c) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(d) The applicant's ability to operate without a permit, as set forth in Subparagraph (b), of Paragraph (1), of Subsection B of 20.11.42.2 NMAC, shall be in effect from the date a timely application is submitted until the final permit is issued or disapproved, provided that the applicant adequately submits any requested additional information by the deadline specified by the department.

(4) **Content of application.** Any person seeking a permit under 20.11.42 NMAC shall do so by filing a written application with the department. The applicant shall submit three copies of the permit application, or more, as requested by the department. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under 20.11.2 NMAC, *Fees*. Fugitive emissions shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. All applications shall:

(a) be made on forms furnished by the department, which for the acid rain portions of permit applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations promulgated under Title IV of the federal act;

(b) state the company's name and address (and, if different, plant name and address), together with the names and addresses of the owner(s), responsible official and the operator of the source, any subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and corporate or partnership relationship to other permittee's subject to 20.11.42 NMAC, and the telephone numbers and names of the owners' agent(s) and the site contact(s) familiar with plant operations;

(c) state the date of the application;

(d) include a description of the source's processes and products (by standard industrial classification code) including any associated with alternative scenarios identified by the applicant, and a map, such as the 7.5 minute topographic quadrangle map published by the United States geological survey or the most detailed map available showing the exact location of the source; the location shall be identified by latitude and longitude or by UTM coordinates;

(e) for all emissions of all air pollutants for which the source is major and all emissions of regulated air pollutants, provide all emissions information, calculations and computations for the source and for each emissions unit, except for insignificant activities (as defined in Subsection **[~~Q~~] R** of 20.11.42.7 NMAC); this shall include:

(i) a process flow sheet of all components of the facility which would be involved in routine operations and emissions;

(ii) identification and description of all emission points in sufficient detail to establish the basis for fees and applicability of requirements of the state and federal acts;

(iii) emissions rates in tons per year, pounds per hour and other terms necessary to establish compliance consistent with the applicable standard reference test method;

(iv) specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent it is needed to determine or regulate emissions;

(v) identification and full description, including all calculations and the basis for all control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

(vi) the maximum and standard operating schedules of the source, as well as any work practice standards or limitations on source operation which affect emissions of regulated pollutants;

(vii) an operational plan defining the measures to be taken to mitigate source emissions during startups, shutdowns and emergencies;

(viii) other relevant information as the department may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to Section 123 of the federal act); and

(ix) for each alternative operating scenario identified by the applicant, all of the information required in Items (i) through (viii) above, as well as additional information determined to be necessary by the department to define such alternative operating scenarios;

(f) provide a list of insignificant activities (as defined in Subsection **[~~Q~~] R** of 20.11.42.7 NMAC) at the source, their emissions, to the extent required by the department, and any information necessary to determine applicable requirements;

(g) provide a citation and description of all applicable air pollution control requirements, including:

(i) sufficient information related to the emissions of regulated air pollutants to verify the requirements that are applicable to the source; and

(ii) a description of or reference to any applicable test method for determining compliance with each applicable requirement;

(h) provide an explanation of any proposed exemptions from otherwise applicable requirements;

(i) provide other specific information that may be necessary to implement and enforce other requirements of the state or federal acts or to determine the applicability of such requirements, including information necessary to collect any fees owed under 20.11.2 NMAC, *Fees*;

(j) for applications which:

(i) are required pursuant to the transition schedule in Subparagraph (b), of Paragraph (2), of Subsection A of 20.11.42.12 NMAC; or

(ii) for subsequent applications or modifications, where emissions or anticipated emissions have increased since modeling for a modification or new source construction was reviewed under 20.11.41 NMAC or 20.11.42 NMAC: submit a dispersion modeling analysis, using EPA approved models and procedures, showing whether emissions from the source would cause air pollutant concentrations in excess of any New Mexico ambient air quality standard for nitrogen oxides, sulfur oxides, total suspended particulates or non-methane hydrocarbons, or any national ambient air quality standard; air pollutants that are not emitted in significant amounts (as defined in 40 CFR 52.21(b)(23)(i)) during routine operations need not be modeled; the department may waive modeling with respect to ozone if the department determines that emissions from the source are not likely to cause ozone concentrations in excess of the national ambient air quality standard;

(k) provide certification of compliance, including:

(i) a certification, by a responsible official consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC of the source's compliance status for each applicable requirement;

(ii) a statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;

(iii) a statement that the source will continue to be in compliance with applicable requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by the applicable requirement, meet additional applicable requirements that become effective during the permit term;

(iv) a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department; and

(v) a statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the federal act;

(l) for sources that are not in compliance with all applicable requirements at the time of permit application, provide a compliance plan that contains:

(i) a description of the compliance status of the source with respect to all applicable requirements;

(ii) a narrative description of how the source will achieve compliance with such requirements for which it is not in compliance;

(iii) a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements; the schedule of compliance shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of compliance; any such schedule of compliance shall be supplemental to, and shall not prohibit the department from taking any enforcement action for noncompliance with, the applicable requirements on which it is based;

(iv) a schedule for submission of certified progress reports no less frequently than every six months; and

(v) for the portion of each acid rain source subject to the acid rain provisions of Title IV of the federal act, the compliance plan content requirements specified in this paragraph, except as specifically superseded by regulations promulgated under Title IV of the federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(5) **Certification.** Any document, including any application form, report, or compliance certification, submitted pursuant to 20.11.42 NMAC shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

B. Confidential information protection:

(1) All confidentiality claims made regarding material submitted to the department under 20.11.42 NMAC shall be reviewed in accordance with the provisions of the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-11 NMSA 1978 and the New Mexico Inspection of Public Records Act, Section 14-2-1, et seq. NMSA 1978.

(2) In the case where an applicant or permittee has submitted information to the department under a claim of confidentiality, the department may also require the applicant or permittee to submit a copy of such information directly to the administrator.

(3) An operating permit is a public record, and not entitled to protection under Section 114(c) of the federal act.

C. Permit content:

(1) **Permit conditions.**

(a) The department shall specify conditions upon a permit, including emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

(i) for major sources, include all applicable requirements for all relevant emissions units in the major source;

(ii) for any non-major source subject to Section 20.11.42.2 NMAC, include all applicable requirements which apply to emissions units that cause the source to be subject to 20.11.42 NMAC;

(iii) specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(iv) include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit; and

(v) include a provision to ensure that the permittee pays fees to the department consistent with the fee schedule in 20.11.2 NMAC, *Fees*;

(vi) for purposes of the permit shield, identify any requirement specifically identified in the application or significant permit modification that the department has determined is not applicable to the source, and state the basis for any such determination.

(b) Each permit issued shall, additionally, include provisions stating that:

(i) the permittee shall comply with all terms and conditions of the permit; any permit noncompliance is grounds for enforcement action; in addition, noncompliance with federally enforceable permit conditions constitutes a violation of the federal act;

(ii) it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

(iii) the permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with Subsection F of 20.11.42.13 NMAC;

(iv) the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition;

(v) the permit does not convey any property rights of any sort, or any exclusive privilege;

(vi) within the period specified by the department, the permittee shall furnish any information that the department may request in writing to determine whether cause exists for reopening and revising, revoking and reissuing, or termination of the permit or to determine compliance with the permit; upon request, the permittee shall also furnish to the department copies of records required by the permit to be maintained.

(c) The terms and conditions for all alternative operating scenarios identified in the application and approved by the department:

(i) shall require that the permittee maintain a log at the permitted facility which documents, contemporaneously with any change from one operating scenario to another, the scenario under which the facility is operating; and

(ii) shall, for each such alternative scenario, meet all applicable requirements and the requirements of 20.11.42 NMAC.

(d) The department may impose conditions regulating emissions during startup and shutdown.

(e) All permit terms and conditions which are required under the federal act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally enforceable under the federal act any terms or conditions included in the permit that are not required under the federal act or under any of its applicable requirements.

(f) The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law or regulation.

(g) The department may include part or all of the contents of the application as terms and conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon emissions of regulated pollutants for which there are no applicable requirements, unless the source is major for that pollutant.

(h) Fugitive emissions from a source shall be included in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(i) The acid rain portion of operating permits for acid rain sources shall:

(i) state that, where an applicable requirement of the federal act is more stringent than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator;

(ii) contain a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no permit modification under this regulation shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source; the permittee may not use allowances as a defense to noncompliance with any other applicable requirement; any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the federal act.

(2) **Permit duration.** The department shall issue operating permits for a fixed term not to exceed five years.

(3) **Monitoring.**

(a) Each permit shall contain all emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.

(b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of record keeping designed to serve as monitoring), the permit shall require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Paragraph (5), of Subsection C of 20.11.42.12 NMAC. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(c) The permit shall also contain specific requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

(4) **Record keeping.**

(a) The permit shall require record keeping sufficient to assure and verify compliance with the terms and conditions of the permit, including:

(i) the date, place as defined in the permit, and time of sampling or measurements;

(ii) the date(s) analyses were performed;

(iii) the company or entity that performed the analyses;

(iv) the analytical techniques or methods used;

(v) the results of such analyses; and

(vi) the operating conditions existing at the time of sampling or measurement.

(b) Records of all monitoring data and support information shall be retained for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(5) **Reporting.** The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including:

(a) submittal of reports of any required monitoring at least every six months; the reports shall be due to the department within 45 days of the end of the permittee's reporting period; all instances of deviations from permit requirements, including emergencies, must be clearly identified in such reports; all required reports must be certified by a responsible official consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC;

(b) prompt reporting of all deviations (including emergencies) from permit requirements, including the date, time, duration and probable cause of such deviations, the quantity and pollutant type of excess emissions resulting from the deviation, and any corrective actions or preventive measures taken; such reports shall include telephone, verbal or facsimile communication within 24 hours of the start of the next business day and written notification within 10 days;

(c) submittal of compliance certification reports at least every 12 months (or more frequently if so specified by an applicable requirement) certifying the source's compliance status with all permit terms and conditions and all applicable requirements relevant to the source, including those related to emission limitations or work practices; the reports shall be due to the department within 30 days of the end of the permittee's reporting period; such compliance certifications shall be submitted to the administrator as well as to the department and shall include:

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) the compliance status of the source;

(iii) whether compliance was continuous or intermittent;

(iv) the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit; and

(v) such other facts as the department may require to determine the compliance status of the source;

(d) such additional provisions as may be specified by the administrator to determine the compliance status of the source.

(6) **Compliance.** To assure and verify compliance with the terms and conditions of the permit and with 20.11.42 NMAC, permits shall also:

(a) require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the department to perform the following:

(i) enter upon the permittee's premises where a source is located or emission related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy any records that must be kept under the conditions of the permit;

(iii) inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) sample or monitor any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements or as otherwise authorized by the federal act;

(b) require that sources required under Subparagraph (k), of Paragraph (4), of Subsection A of 20.11.42.12 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more frequently if specified in the applicable requirement or by the department; such progress reports shall be consistent with the schedule of compliance and requirements of Subparagraph (k), of Paragraph (4), of Subsection A of 20.11.42.12 NMAC, and shall contain:

(i) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(c) include such other provisions as the department may require.

(7) **Operational flexibility.**

(a) **Section 502(b)(10) changes.**

(i) The permittee may make Section 502(b)(10) changes, as defined in Section 20.11.42.7 NMAC, without applying for a permit modification, if those changes are not Title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).

(ii) For each such change, the permittee shall provide written notification to the department and the administrator at least seven days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(iii) The permittee and department shall attach each such notice to their copy of the relevant permit.

(iv) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

(b) **Emissions trading within a facility.**

(i) The department shall, if an applicant requests it, issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit in addition to any applicable requirements. Such terms and conditions shall include all terms and conditions required under Subsection C of 20.11.42.12 NMAC to determine compliance. If applicable requirements apply to the requested emissions trading, permit conditions shall be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval.

(ii) The applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable requirements.

(iii) For each such change, the permittee shall provide written notification to the department and the administrator at least seven days in advance of the proposed changes. Such notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(iv) The permittee and department shall attach each such notice to their copy of the relevant permit.

(8) **Off-permit changes.**

(a) Permittees are allowed to make, without a permit modification, changes that are not addressed or prohibited by the operating permit, if:

(i) each such change meets all applicable requirements and shall not violate any existing permit term or condition;

(ii) such changes are not subject to any requirements under Title IV of the federal act and are not Title I modifications;

(iii) such changes are not subject to permit modification procedures under Subsection E of 20.11.42.13 NMAC; and

(iv) the permittee provides contemporaneous written notice to the department and EPA of each such change, except for changes that qualify as insignificant activities; such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted and any applicable requirement that would apply as a result of the change.

(b) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(9) **Permit shield.**

(a) Except as provided in 20.11.42 NMAC, the department shall expressly include in a 20.11.42 NMAC permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) such applicable requirements are included and are specifically identified in the permit; or

(ii) the department, in acting on the permit application or significant permit modification, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A 20.11.42 NMAC permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide a shield for that provision.

(c) Nothing in 20.11.42.12 NMAC or in any 20.11.42 NMAC permit shall alter or affect the following:

(i) the provisions of Section 303 of the federal act - *Emergency Powers*, including the authority of the administrator under Section 303, or the provisions of the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-10 NMSA 1978;

(ii) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) the applicable requirements of the acid rain program, consistent with Section 408(a) of the federal act;

(iv) the ability of EPA to obtain information from a source pursuant to Section 114 of the federal act, or the department to obtain information in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act 74-2-13 NMSA 1978.

(d) The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to Paragraph (4), of Subsection A of 20.11.42.13 NMAC.

(e) The permit shield may extend to terms and conditions that allow emission increases and decreases as part of emissions trading within a facility pursuant to Subparagraph (b), of Paragraph (7), of Subsection C of 20.11.42.12 NMAC, and to all terms and conditions under each operating scenario included pursuant to Subparagraph (e), of Paragraph (1), of Subsection C of 20.11.42.12 NMAC.

(f) The permit shield shall not extend to *administrative permit amendments* under Paragraph (1), of Subsection E of 20.11.42.13 NMAC, to m*inor permit modifications* under Paragraph (2), of Subsection E of 20.11.42.12 NMAC, to *section 502(b)(10) changes* under Subparagraph (a), of Paragraph (7) of Subsection C of 20.11.42.12 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part under Subsection F of 20.11.42.13 NMAC.

D. General permits:

(1) **Issuance of general permits.**

(a) The department may, after notice and opportunity for public participation and EPA and affected program review, issue a general permit covering numerous similar sources. Such sources shall be generally homogenous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.

(b) Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit.

(2) **Authorization to operate under a general permit.**

(a) The owner or operator of a 20.11.42 NMAC source which qualifies for a general permit must:

(i) apply to the department for coverage under the terms of the general permit;

(ii) apply for an operating permit consistent with Subsection A of 20.11.42.12 NMAC.

(b) The department may, in the general permit, provide for applications which deviate from the requirements of Paragraph (4), of Subsection A of 20.11.42.12 NMAC, provided that such applications meet the requirements of the federal act and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The department shall review the application for authorization to operate under a general permit for completeness within 30 days after its receipt of the application.

(c) The department shall authorize qualifying sources which apply for coverage under the general permit to operate under the terms and conditions of the general permit. The department shall take final action on a general permit authorization request within 90 days of deeming the application complete.

(d) The department may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under Subsection B of 20.11.42.13 NMAC. Such an authorization shall not be a permitting action for purposes of administrative review under the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-7.H NMSA 1978.

(e) Authorization to operate under a general permit shall not be granted for acid rain sources unless provided for in regulations promulgated under Title IV of the federal act.

(f) The permittee shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit.

E. Emergency provision:

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

(2) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(b) the permitted facility was at the time being properly operated;

(c) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(d) the permittee fulfilled notification requirements under Subparagraph (b), of Paragraph (5), of Subsection C of 20.11.42.12 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(4) This provision is in addition to any emergency or upset provision contained in any applicable requirement, except that 20.11.42 NMAC sources shall not be subject to the provisions of 20.11.90.12 NMAC for permit terms and conditions issued under 20.11.42 NMAC.

[3/1/94. . .12/1/95; 20.11.42.12 NMAC - Rn, 20 NMAC 11.42.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.42.II.1, 10/1/02; A, 8/10/09]

20.11.42.13 PERMIT PROCESSING:

A. Action on permit applications:

(1) A permit (including permit renewal) or permit modification shall only be issued if all of the following conditions have been met:

(a) the department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under Subsection D of 20.11.42.12 NMAC;

(b) except for administrative and minor permit modifications, the department has complied with the requirements for public participation procedures under Subsection B of 20.11.42.13 NMAC;

(c) except for administrative amendments, the department has complied with the requirements for notifying and responding to affected programs under Subsection C of 20.11.42.13 NMAC;

(d) the conditions of the permit provide for compliance with all applicable requirements; and

(e) the administrator has received a copy of the proposed permit and any notices required under Subsection C of 20.11.42.13 NMAC, and has not objected to issuance of the permit within the time period specified within that subsection.

(2) The department shall, within 60 days after its receipt of an application for a permit or significant permit modification, review such application for completeness. Unless the department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. When additional information is requested by the department prior to ruling an application complete, receipt of such information shall be processed as a new application for purposes of 20.11.42.13 NMAC. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

(3) The department shall take final action on each permit application (including a request for permit renewal) within 12 months after an application is ruled complete by the department, except that:

(a) for sources in operation on or before the effective date of 20.11.42 NMAC and which submit to the department timely and complete applications in accordance with Subsection A of 20.11.42.12 NMAC, the department shall take final action on one-third of such applications annually over a period not to exceed three years after such effective date;

(b) any complete permit application containing an early reduction demonstration under Section 112(i)(5) of the federal act shall be acted on within nine months of deeming the application complete; and

(c) the acid rain portion of permits for acid rain sources shall be acted upon in accordance with the deadlines in Title IV of the federal act and the regulations promulgated thereunder.

(4) If a timely and complete application for a permit renewal is submitted, consistent with Subsection A of 20.11.42.12 NMAC, but the department has failed to issue or disapprove the renewal permit before the end of the term of the previous permit, then the permit shall not expire and all the terms and conditions of the permit shall remain in effect until the renewal permit has been issued or disapproved.

(5) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected program, and EPA review that apply to initial permit issuance.

(6) The department shall state within the draft permit the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions with dates of latest amendments).

(7) The department shall grant or disapprove the permit based on information contained in the department's administrative record. The administrative record shall consist of the application, any additional information submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the department, and, if a public hearing is held, the evidence submitted at the hearing.

(8) If the department grants or disapproves a permit or permit modification, the department shall notify the applicant by certified mail of the action taken and the reasons therefore. If the department grants a permit or modification, the department shall mail the permit or modification, including all terms and conditions, to the applicant by certified mail.

(9) **Voluntary discontinuation.** Upon request by the permittee, the department shall permanently discontinue a 20.11.42 NMAC permit. Permit discontinuance terminates the permittee's right to operate the source under the permit. The department shall confirm the permit discontinuance by certified letter to the permittee.

(10) No permit shall be issued by failure of the department to act on an application or renewal.

B. Public participation:

(1) Proceedings for all permit issuances (including renewals), significant permit modifications, reopenings, revocations and terminations, and all modifications to the department's list of insignificant activities,

shall include public notice and provide an opportunity for public comment. The department shall provide 30 days for public and affected program comment. The department may hold a public hearing on the draft permit for any reason it deems appropriate, and shall hold such a hearing in the event of significant public interest. The department shall give notice of any public hearing at least 30 days in advance of the hearing.

(2) Public notice and notice of public hearing shall be given by publication in a newspaper of general circulation, to persons on a mailing list developed by the department (including those who request in writing to be on the list), and by other means if necessary to assure adequate notice to the affected public.

(3) The public notice shall identify:

(a) the affected facility;

(b) the names and addresses of the applicant or permittee and its owners;

(c) the name and address of the department;

(d) the activity or activities involved in the permit action;

(e) the emissions change(s) involved in any permit modification;

(f) the name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, and relevant supporting materials;

(g) a brief description of the comment procedures required by the department; and

(h) as appropriate, a statement of procedures to request a hearing, or the time and place of any scheduled hearing.

(4) Notice of public hearing shall identify:

(a) the affected facility;

(b) the names and addresses of the applicant or permittee and its owners;

(c) the name and address of the department;

(d) the activity or activities involved in the permit action;

(e) the name, address and telephone number of a person from whom interested persons may obtain additional information;

(f) a brief description of hearing procedures; and

(g) the time and place of the scheduled hearing.

(5) The time, date, and place of the hearing shall be determined by the department. The department shall appoint a hearing officer. A transcript of the hearing shall be made at the request of either the department or the applicant and at the expense of the person requesting the transcript. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

(6) The department shall keep a record of the commenters and also of the issues raised during the public participation process so that the administrator may fulfill his or her obligation under Section 505(b)(2) of the federal act to determine whether a citizen petition may be granted. Such records shall be available to the public upon request.

(7) The department shall provide such notice and opportunity for participation by affected programs as is provided for by Subsection C of 20.11.42.13 NMAC.

C. Review by the administrator and affected programs:

(1) **Notification.** The department shall not issue an operating permit (including permit renewal or reissuance), minor permit modification, or significant permit modification until affected programs and the administrator have had an opportunity to review the proposed permit as required under 20.11.42.13 NMAC. Permits for source categories waived by the administrator from this requirement and any permit terms or conditions, which are not required under the federal act or under any of its requirements, are not subject to administrator review or approval.

(a) Within five days of notification by the department that the application has been determined complete, the applicant shall provide a copy of the complete permit application (including the compliance plan and all additional materials submitted to the department) directly to the administrator. The permit or permit modification shall not be issued without certification to the department of such notification. The department shall provide to the administrator a copy of each draft permit, each proposed permit, each final operating permit, and any other relevant information requested by the administrator.

(b) The department shall provide notice of each draft permit to any affected program on or before the time that the department provides this notice to the public under Subsection B of 20.11.42.13 NMAC, except to the extent that minor permit modification procedures require the timing of the notice to be different.

(c) The department shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require in order to ascertain whether the program complies with the requirements of the federal act or related applicable requirements.

(2) **Responses to objections.**

(a) No permit for which an application must be transmitted to the administrator under 20.11.42 NMAC shall be issued by the department if the administrator, after determining that issuance of the proposed permit would not be in compliance with applicable requirements, objects to such issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(b) If the administrator does not object in writing under Subparagraph (a) above, any person may, within 60 days after the expiration of the administrator's 45-day review period, petition the administrator to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in Subsection B of 20.11.42.13 NMAC, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator objects to the permit as a result of a petition filed under this subparagraph, the department shall not issue the permit until the administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the administrator's objection.

(c) The department, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under Paragraph (2), of Subsection E of 20.11.42.13 NMAC), shall notify the administrator and any affected program in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected program submitted during the public or affected program review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on federally enforceable applicable requirements.

D. Petitions for review of final action:

(1) **Hearing before the board.**

(a) Any person who participated in a permitting action before the department and who is adversely affected by such permitting action may file a petition for hearing before the board. For the purposes of 20.11.42.13 NMAC, permitting action shall include the failure of the department to take final action on an application for a permit (including renewal) or permit modification within the time specified in 20.11.42 NMAC.

(b) The petition shall be made in writing to the board within 30 days from the date notice is given of the department's action and shall specify the portions of the permitting action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by this subparagraph, and attach a copy of the permitting action for which review is sought. Unless a timely request for hearing is made, the decision of the department shall be final. The petition shall be copied simultaneously to the department upon receipt of the appeal notice. If the petitioner is not the applicant or permittee, the petitioner shall mail or hand-deliver a copy of the petition to the applicant or permittee. The department shall certify the administrative record to the board.

(c) If a timely request for hearing is made, the board shall hold a hearing within 90 days of receipt of the petition in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-7 NMSA 1978.

(2) **Judicial review.**

(a) Any person who is adversely affected by an administrative action taken by the board pursuant to Paragraph (1), of Subsection D of 20.11.42.13 NMAC may appeal to the court of appeals in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-9 NMSA 1978. Petitions for judicial review must be filed no later than 30 days after the administrative action.

(b) The judicial review provided for by Subsection D of 20.11.42.13 NMAC shall be the exclusive means for obtaining judicial review of the terms and conditions of the permit.

E. Permit modifications:

(1) **Administrative permit amendments.**

(a) An administrative permit amendment is one that:

(i) corrects typographical errors;

(ii) provides for a minor administrative change at the source, such as a change in the address or phone number of any person identified in the permit;

(iii) incorporates a change in the permit solely involving the retiring of an emissions unit;

(iv) requires more frequent monitoring or reporting by the permittee; or

(v) any other type of change which has been determined by the department and the administrator to be similar to those in this paragraph.

(b) Changes in ownership or operational control of a source may be made as administrative amendments provided that:

(i) a written agreement, containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee, has been submitted to the department, and either the department has determined that no other change in the permit is necessary, or changes deemed necessary by the department have been made;

(ii) the new owners have submitted the application information required in Subparagraph (b), of Paragraph (4), Subsection A of 20.11.42.12 NMAC;

(iii) no grounds exist for permit termination, as set out in Items (ii) and (iii), of Subparagraph (c), of Paragraph (1), of Subsection F of 20.11.42.13 NMAC; and

(iv) the permittee has published a public notice of the change in ownership of the source in a newspaper of general circulation in the area where the source is located.

(c) The department may incorporate administrative permit amendments without providing notice to the public or affected programs, provided that it designates any such permit modifications as administrative permit amendments and submits a copy of the revised permit to the administrator.

(d) The department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request. The permittee may implement the changes outlined in Items (i) through (iv), of Subparagraph (a), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC immediately upon submittal of the request for the administrative amendment. The permittee may implement the changes outlined in Item (v), of Subparagraph (a), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC or Subparagraph (b), of Paragraph (1), Subsection E of 20.11.42.13 NMAC above upon approval of the administrative amendment by the department.

(2) **Minor permit modifications.**

(a) Minor permit modification procedures may be used only for those permit modifications that:

(i) do not violate any applicable requirement;

(ii) do not involve relaxation of existing monitoring, reporting, or record keeping requirements in the permit;

(iii) do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject; such terms and conditions include any federally enforceable emissions cap assumed to avoid classification as a Title I modification and any alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the federal act;

(v) are not Title I modifications; and

(vi) are not required by the department to be processed as a significant modification pursuant to Paragraph (3), Subsection E of 20.11.42.13 NMAC.

(b) A permittee shall not submit multiple minor permit modification applications that may conceal a larger modification that would not be eligible for minor permit modification procedures. The department may, at its discretion, require that multiple related minor permit modification applications be submitted as a significant permit modification.

(c) An application requesting the use of minor permit modification procedures shall meet the requirements of Paragraphs (3) and (4), of Subsection A of 20.11.42.12 NMAC and shall include:

(i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) the applicant's suggested draft permit;

(iii) certification by a responsible official, consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(iv) if the requested permit modification would affect existing compliance plans or schedules, related progress reports, or certification of compliance requirements, an outline of such effects.

(d) The department shall, within 30 days after its receipt of an application for a minor permit modification, review such application for completeness. Unless the department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within 30 days of receipt of an application, the application shall be deemed complete. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

(e) Within five working days of notification by the department that the minor permit modification application has been ruled complete, the applicant shall meet its obligation under Paragraph (1), of Subsection C of 20.11.42.13 NMAC to notify the administrator and affected programs of the requested permit modification. The department promptly shall send any notice required under Subparagraph (b), of Paragraph (1), of Subsection C of 20.11.42.13 NMAC and Paragraph (2), of Subsection C of 20.11.42.13 NMAC to the administrator and affected programs.

(f) The permittee may make the change proposed in its minor permit modification application immediately after such application is deemed complete. After the permittee makes the change allowed by the preceding sentence, and until the department takes any of the actions specified in Subparagraph (g), of Paragraph (2), of Subsection E of 20.11.42.13 NMAC below, the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) The department may not issue a final minor permit modification until after the administrator's 45-day review period of the proposed permit modification or until EPA has notified the department that the administrator will not object to issuance of the permit modification, although the department may approve the permit modification prior to that time. Within 90 days of ruling the application complete under minor permit modification procedures or within 15 days after the end of the administrator's 45-day review period under, whichever is later, the department shall:

(i) issue the permit modification as it was proposed;

(ii) disapprove the permit modification application;

(iii) determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by Paragraph (1), of Subsection C of 20.11.42.13 NMAC.

(3) **Significant permit modifications.**

(a) A significant permit modification is:

(i) any revision to an operating permit that does not meet the criteria under the provisions for administrative permit amendments under Paragraph (1), of Subsection E of 20.11.42.13 NMAC or for minor permit modifications under Paragraph (2), of Subsection E of 20.11.42.13 NMAC above;

(ii) any modification that would result in any relaxation in existing monitoring, reporting or record keeping permit terms or conditions;

(iii) any modification for which action on the application would, in the judgment of the department, require decisions to be made on significant or complex issues; and

(iv) changes in ownership which do not meet the criteria of Subparagraph (b), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC.

(b) For significant modifications which are not required to undergo pre-construction permit review and approval, changes to the source which qualify as significant permit modifications shall not be made until the department has issued the operating permit modification.

(c) For significant modifications which have undergone pre-construction permit review and approval, the permittee shall:

(i) before commencing operation, notify the department in writing of any applicable requirements and operating permit terms and conditions contravened by the modification, emissions units affected by the change, and allowable emissions increases resulting from the modification; and

(ii) within 12 months after commencing operation, file a complete operating permit modification application.

(d) Where an existing operating permit would specifically prohibit such change, the permittee must obtain an operating permit modification before commencing operation or implementing the change.

(e) Significant permit modifications shall meet all requirements of 20.11.42 NMAC for permit issuance, including those for applications, public participation, review by affected programs and review by the administrator.

(f) The department shall complete review on the majority of significant permit modification applications within nine months after the department rules the applications complete.

(4) **Modifications to acid rain sources.** Administrative permit amendments and permit modifications for purposes of the acid rain portion of the permit shall be governed by regulations promulgated by the administrator under Title IV of the federal act.

F. Permit reopening, revocation or termination:

(1) **Action by the department.**

(a) Each permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised for any of the following, and may be revoked and reissued for (iii) or (iv) of the following:

(i) additional applicable requirements under the federal act become applicable to a major source with a remaining permit term of three or more years; such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement; no such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms or conditions have been extended past the expiration date of the permit pursuant to Paragraph (4), Subsection A of 20.11.42.13 NMAC;

(ii) additional requirements (including excess emissions requirements) become applicable to a source under the acid rain program promulgated under Title IV of the federal act; upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

(iii) the department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or

(iv) the department or the administrator determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

(b) Proceedings to reopen and revise, or revoke and reissue, a permit shall affect only those parts of the permit for which cause to reopen or revoke exists. Units for which permit conditions have been revoked shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.

(c) A permit, or an authorization to operate under a general permit, may be terminated when:

(i) the permittee fails to meet the requirements of an approved compliance plan;

(ii) the permittee has been in significant or repetitious non-compliance with the operating permit terms or conditions;

(iii) the applicant or permittee has exhibited a history of willful disregard for environmental laws of any state or tribal authority, or of the United States;

(iv) the applicant or permittee has knowingly misrepresented a material fact in any application, record, report, plan, or other document filed or required to be maintained under the permit;

(v) the permittee fails to pay fees required under the fee schedule in 20.11.2 NMAC;

(vi) the permittee falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the permit;

(vii) the administrator has found that cause exists to terminate the permit.

(d) The department shall, by certified mail, provide a notice of intent to the permittee at least 30 days in advance of the date on which a permit is to be reopened or revoked, or terminated, except that the department may provide a shorter time period in the case of an emergency.

(2) **Action by the administrator.** Within 90 days, or longer if the administrator extends this period, after receipt of written notification that the administrator has found that cause exists to terminate, modify or revoke and reissue a permit the department shall forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. Within 90 days from receipt of an administrator objection to a proposed determination, the department shall address and act upon the administrator's objection.

(3) **Compliance orders.** Notwithstanding any action which may be taken by the department or the administrator under Paragraph (1) and (2), of Subsection F of 20.11.42.13 NMAC, a compliance order issued in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-12 NMSA 1978 may include a suspension or revocation of any permit or portion thereof.

G. Citizen suit: Pursuant to Section 304 of the federal act, 42 USC 7604, any person may commence certain civil actions under the federal act.

H. Enforcement: Notwithstanding any other provision in the New Mexico state implementation plan approved by the administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

(1) **Presumptively credible evidence.** Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

(a) a monitoring method approved for the source pursuant to 20.11.42 NMAC and incorporated into an operating permit; or

(b) compliance methods specified in the applicable plan.

(2) **Presumptively credible testing, monitoring, or information gathering methods**. The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

(a) any federally enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61 and 75; and

(b) other testing, monitoring or information gathering methods that produce information comparable to that produced by any method in Paragraphs (1) or (2), of Subsection H of 20.11.42.13 NMAC.

[3/1/94. . .12/1/95; 20.11.42.13 NMAC - Rn, 20 NMAC 11.42.II.2, 10/1/02; A, 8/10/09]

20.11.42.14 RADIONUCLIDES: [Reserved]

[12/1/95; 20.11.42.14 NMAC - Rn, 20 NMAC 11.42.II.3 & A, 10/1/02]

HISTORY OF 20.11.42 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. 41, Operating Permits, 3/1/94.

Regulation No. 41, Operating Permits, 12/16/94.

History of Repealed Material: [Reserved]

Other History: Regulation No. 41, Operating Permits, filed 12/16/94 was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.42, Operating Permits, filed 10/27/95.

20 NMAC 11.42, Operating Permits, filed 10/27/95, was **renumbered, reformatted, amended and replaced** by 20.11.42 NMAC, Operating Permits, effective 10/1/02.