

**Albuquerque-Bernalillo County
Air Quality Control Board**

Rulemaking Process Guidebook

Table of Contents

I.	Introduction	03
II.	Developing a Draft Regulation Prior to Bringing It to the Air Board	05
III.	Requesting a Rulemaking Hearing	06
	A. New Rules, Amendments and Repeal are Requested by Petition	06
	B. Board Decision to Hold a Hearing on the Petition	06
	C. Public Notice, Arrangements for Hearing Room, Transcription or Recording	06
IV.	The Prehearing Process	08
	A. Prehearing Scheduling Order	08
	B. Notice of Intent to Present Technical Testimony	08
	C. Alternatives: Entry of Appearance or Non-Technical Public Comment	08
V.	The Rulemaking Hearing	10
VI.	The Post-Hearing Process	11
	A. Post-Hearing Submittals	11
	B. Deliberations Immediately Following the Hearing	11
	C. Board Decision-Making Criteria	11
	D. Notice and Publication of Board Action, Appeals	11
VII.	Participating in Rulemaking Proposals by the Environmental Health Department	12
	A. Comment Prior to Filing of a Petition	12
	B. Comment After Filing of a Petition	12
	C. Participation by NOI, Entry of Appearance, or Non-Technical Comment	12
	D. Participation at the Hearing	12
	E. Participation After the Hearing	12
VIII.	Participating as a Member of the Public—Some Practical Observations	13
	A. Staying Informed	13
	B. Engaging Without Frustration	13
	Appendix 1. Glossary of Terms	16
	Appendix 2. Example Rulemaking Petition	19

I. Introduction

The Albuquerque-Bernalillo County Air Quality Control Board (Board) is an administrative agency responsible for ensuring that provisions of the federal Clean Air Act, the state Air Quality Control Act, and the Air Quality Control Board Ordinances adopted by the Albuquerque City Council and the Bernalillo County Commission are implemented within Albuquerque-Bernalillo County (except Indian Country).

The Board consists of seven members appointed for three-year terms. Four members are appointed by the City and three members are appointed by the County. A majority of the membership of the Board are individuals who represent the public interest. Board members are selected for their concerns about, and commitment to, local ambient air quality. Additionally, the City Environmental Planning Commission and the County Planning Commission may each appoint a non-voting member to be liaisons to the Board.

Through adoption of regulations and air quality standards (together, 'regulations'), the Board has authorized an air quality management program that promotes clean air for the County's residents and visitors. The process of adopting regulations is known as "rulemaking," and regulations may also be referred to as "rules." The City of Albuquerque Environmental Health Department develops and presents proposed regulations to the Board to prevent or abate air pollution. Additionally, any person may propose a rule for adoption.

The Board's existing regulations are available online at:
<http://164.64.110.239/nmac/ title20/T20C011.htm>.

This Guidebook has been prepared to provide members of the public and interested parties with information about the Board's rulemaking process. If you wish to participate in the rulemaking process, you are responsible for reviewing the relevant statutes and rules to assure understanding of your rights and responsibilities. See the New Mexico Air Quality Control Act, NMSA 1978, Sections 74-2-4 and 74-2-5; the Board's Rulemaking Procedures in Section 20.11.82 of the New Mexico Administrative Code (NMAC) (Part 82); Revised Ordinances of Albuquerque §§ 9-5-1-5 and -6; and the Bernalillo County Code of Ordinances, Art. II §§ 30-34 and -35.

The Board hopes this Guidebook will facilitate public involvement and improve understanding of the rulemaking process by describing how members of the public can propose their own rules or become involved in a rulemaking begun by others.

Anyone interested in participating in Board rulemaking is advised to consult with an attorney on the most effective means of doing so. The Board, the hearing officer, the hearing clerk or EHD staff cannot provide legal advice. The State Bar of New Mexico offers an attorney referral program, as well as other resources on obtaining legal services, at www.nmbar.org. This Guidebook does not constitute legal advice and is not intended to substitute for advice provided by a licensed attorney. Nor does this Guidebook supersede or replace Part 82 or any applicable law. The reader should refer

to the above laws and to Part 82 and follow the specific requirements for any rulemaking process.

For further information regarding the rulemaking process or the Board, please contact:

Physical: City of Albuquerque Environmental Health Department Air Quality Program
One Civic Plaza NW, Room #3023
Albuquerque, New Mexico 87102

Website: www.cabq.gov/airquality/air-quality-control-board

Phone: 505-768-2601

Email: adaffern@cabq.gov

II. Developing a Draft Regulation Prior to Bringing It to the Air Board

Although typically the City of Albuquerque Environmental Health Department (EHD) proposes new and amended rules, or rule repeals, any person may propose a new or amended rule or repeal by filing a rulemaking petition. Filing this petition will be described in the next section of this Guidebook.

Persons proposing their own rules may wish to consider the following. Air quality agencies in the United States typically undertake a number of steps prior to proposing new regulations to a regulatory authority such as the Air Board. These steps often require months or years to complete. They include obtaining access to technical and legal expertise, performing necessary technical and legal research; writing a draft of the proposed regulation; sending the draft to affected stakeholders for comment; and revising the draft based on stakeholder comment. This process is not legally required but following steps such as these will help ensure that a proposed regulation is legally and technically sound. It also alerts the person proposing a rule if some aspect of the rule is unreasonable or impractical so that changes can be made to the proposal before filing a petition. Once a petition has been filed and a public notice about the proposal has been made, only certain changes can be made without starting over again with a new public notice. As a result, it is important to discuss a proposed rule with those who will be affected by the rule before proposing it.

III. Requesting a Rulemaking Hearing

A. New Rules, Amendments and Repeal are Requested by Petition

A regulation is proposed to the Air Board by filing a rulemaking petition. The rulemaking petition begins a lengthy administrative process that may result in a Board hearing on the proposed regulation. At the hearing, the Board will decide whether to adopt the proposed regulation.

A rulemaking petition must be in writing, filed with the Board's hearing clerk as an original with fifteen copies, and has several required parts:

1. Name of the regulation.
2. A statement of reasons for the proposed change.
3. Citation to the relevant statutes authorizing the proposed change.
4. Estimate of the time needed for the rulemaking hearing.
5. A copy of the entire proposed rule, including the text of a new rule or amendments to an existing rule. The copy of the proposed new or amended rule must be printed with individual line numbers and indicate with strike-out and underline all proposed changes to language in an existing regulation.

If a petition is filed without all required elements, the Board's hearing clerk shall return the documents to the petitioner, who will be asked to resubmit the petition in the required form. Examples of rulemaking petitions and related documents may be found on the Board's webpage.

B. Board Decision to Hold a Hearing on the Petition

After a proper petition has been received, the Board has sixty days to determine at a public meeting whether to hold a hearing on the proposal. Any person may respond to the petition in writing, or respond in person at the public meeting before the Board makes its decision.

If the Board decides by a majority vote to hold a public hearing on the petition, the Board may appoint a hearing officer to handle the pre-hearing process and conduct the hearing. The Board may choose not to hold a hearing on a petition if it appears to be outside the scope of the Board's legal authority, not cost-effective, or otherwise impractical or unreasonable in implementation, based on factors that state and local law require the Board to consider in its rulemaking (discussed below).

C. Public Notice, Arrangements for Hearing Room, Transcription or Recording

The hearing clerk is responsible for providing all required public notice of the hearing and the proposed regulatory change. The hearing clerk is also responsible for arranging for a hearing room and verbatim transcription or recording of the hearing. A petitioner bears the costs of transcription for itself and the Board. Petitioners should

bear in mind that the cost of such a transcript can run from several hundred to thousands of dollars. Petitioners who feel they are unable to pay this cost should consult with the hearing officer on potential alternative arrangements.

IV. The Prehearing Process

A. Prehearing Scheduling Order

Typically, the hearing officer will issue a pre-hearing order addressing specific deadlines and procedures for the hearing. The petitioner or any party may request the order, or the hearing officer may issue one on her own initiative.

Examples of provisions in a pre-hearing order may include the scheduling of a pre-hearing teleconference; the scheduling of public comment sessions; a requirement that interpreters or special equipment be provided or additional public notice be provided; early deadlines for pre-filed technical testimony; and permission to present technical witnesses in panels.

B. Notice of Intent to Present Technical Testimony

Apart from any requirements set out in a pre-hearing order, the rulemaking rules require all persons, including the petitioner, who intend to present technical testimony (scientific, engineering, economic or other specialized testimony) to file a 'Notice of Intent' (NOI). The NOI must be filed as an original with fifteen copies, and has required elements:

1. The name of the person for whom the witness(es) will testify ("person" can refer to an organization as well as an individual).
2. Each technical witness to be presented and their qualifications, including educational and work background.
3. A copy of the direct testimony of each technical witness and the anticipated duration of testimony.
4. The text of any recommended modifications to the proposed regulatory change. "Modifications" refers to changes to the proposed rule that was filed with the petition. A petitioner, or other parties filing an NOI, may seek such changes after the petition is filed. Petitioners should bear in mind that an NOI proposing a major change to a rule as filed with the petition may require that notice for the hearing be reissued. Reissuing the notice would result in a delay in the scheduled date of the hearing.
5. An original and fifteen copies of all exhibits that will be offered, including any proposed statement of reasons for adoption.

NOIs must be filed with the hearing clerk no later than fifteen days before the hearing, unless an earlier deadline has been set, and must be served on the petitioner and other parties. The hearing clerk can provide contact information for all parties. If an NOI is not timely filed or lacks the necessary information, the hearing officer may exclude the testimony or exhibits offered at hearing.

C. Alternatives: Entry of Appearance or Non-Technical Public Comment

In addition to participating in a rulemaking hearing by presenting technical evidence via an NOI, a person may participate in two other ways. First, a person may choose to become a party, which entitles that person to key documents filed with the Board during the rule-making process, after the person becomes a party. A person becomes a party by filing an entry of appearance at least fifteen days prior to hearing, or as required by a pre-hearing order. Second, a person may choose not to become a party at all, and instead to offer non-technical public comment at the hearing. No filings are necessary to offer non-technical public comment at a hearing.

V. The Rulemaking Hearing

The rules of civil procedure and the rules of evidence, which would govern how parties make their case in a court room, do not apply in a rulemaking hearing. However, the rulemaking hearing typically has some legal formalities. Motions and objections may be made and argued such that evidentiary rulings are necessary and the rules of evidence will be looked to for guidance.

The hearing officer shall conduct the hearing in a way that provides a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy, cumbersome, or repetitious.

All testimony is taken under oath and is subject to cross-examination by the Board, hearing officer, other parties, and other interested persons.

The hearing proceeds as follows:

1. An introduction by the hearing officer on the subject matter and procedures for the hearing.
2. Opening statements by any party wishing to make one.
3. The petitioner's presentation of evidence.
4. Other parties' presentation of evidence, in an order determined by the hearing officer based on the NOIs and witness availability.
5. Non-technical public comment, which is always invited at the end of the parties' technical presentations and is usually invited at other times as well. Every day of a multi-day hearing includes an opportunity to provide public comment.
6. Closing statements by any party who wishes to make one, unless the hearing officer directs that closing statements be put in writing as part of a post-hearing submittal.
7. A closing discussion by the hearing officer on whether the record will be left open for post-hearing submittals and the deadline for those submittals.

VI. The Post-Hearing Process

A. Post-Hearing Submittals

Post-hearing submittals from the parties are typically due after the transcript is prepared and include written closing arguments and a final proposed statement of reasons. If the Board requests a hearing officer report, the report will include a discussion of the issues raised at hearing, the parties' final proposals and the evidence supporting those proposals, and a recommendation for Board action.

B. Deliberations Immediately Following the Hearing

If the record is not left open for post-hearing submittals or a hearing officer report, the Board may choose to deliberate and take action immediately following the close of the rulemaking hearing.

C. Board Decision-making Criteria

In making its regulations, state and local law requires the Board to give appropriate weight to all facts and circumstances, including but not limited to:

1. Character and degree of injury to or interference with health, welfare, visibility and property;
2. The public interest, including the social and economic value of the sources and subjects of air contaminants; and
3. Technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

There are also legal constraints on certain regulations which the Board must observe. For example, regulations prescribing emission standards for hazardous pollutants must be no more stringent than but at least as stringent as those adopted by the Environmental Protection Agency (EPA) and can only apply to those sources which the EPA has applied its regulations.

D. Notice and Publication of Board Action, Appeals

The hearing clerk will provide notice of the Board's action to all parties and other interested persons. The hearing clerk will also assure the necessary publication of the action in the New Mexico Register and other places. Any appeal of that action must be taken to the New Mexico Court of Appeals within thirty days of the date of the Board's written order issued after the proceeding.

VII. Participating in Rulemaking Proposals by the Environmental Health Department

The City of Albuquerque Environmental Health Department (EHD) periodically files rulemaking petitions with the Board using the procedures discussed above. Members of the public are encouraged to participate in these rulemaking actions. Several means of doing this are described below.

A. Comment Prior to Filing of a Petition

EHD begins developing a proposed regulation several months prior to filing a petition with the Board. EHD follows the process of researching and writing a proposed regulation described earlier. As part of this pre-petition development process, EHD circulates proposed drafts for public comment to the Air Board listserv. Members of the public may sign up for the Air Board listserv by contacting the Board's hearing clerk.

B. Comment after Filing of a Petition

When EHD has completed its proposed draft regulation, it will file a petition for rulemaking with the Air Board. EHD will distribute the draft to the Air Board listserv. Written comments on the draft may be sent to the hearing clerk for consideration by the Board. Members of the public may come to the Air Board meeting at which the Board considers the EHD petition in order to comment in person.

C. Participation by NOI, Entry of Appearance, or Non-Technical Comment

Procedures for these forms of participation are described above. If the Board grants a hearing on EHD's proposed rule, members of the public may participate by filing an NOI to present technical testimony on EHD's proposal. Alternately, members of the public may file an entry of appearance. They may also file written, non-technical comments with the hearing clerk for consideration by the Board at the hearing.

D. Participation at the Hearing

Any member of the public may deliver non-technical public comment on EHD's proposal in person at the hearing, either orally or in writing. They may do this even if they have not filed an NOI, entry of appearance, or prior written comment.

E. Participation after the Hearing

If the hearing officer orders the hearing record to be kept open, parties may file additional post-hearing documents as described above. However, once the Board has deliberated and made a decision about the proposed regulation, no further information will be considered.

VIII. Participating as a Member of the Public—Some Practical Observations

A. Staying Informed

1. As noted above, the Board has a listserv for providing notice of upcoming meetings and hearings related to air quality management in Bernalillo County. To join the listserv, contact the hearing clerk. You may subscribe or unsubscribe at any time.
2. Documents related to any rulemaking are available for public review and copying from the hearing clerk. The hearing clerk posts all filed documents on the Board webpage for easy access.
3. The hearing clerk can serve as a resource to answer questions about the status of an action and upcoming deadlines, provide contact information for those involved, supply copies of documents filed or a link to a webpage where they can be found, and offer other practical information. The Board's hearing clerk cannot offer legal advice, including advice on how to interpret or act on a proposed regulation.
4. Questions or comments about the substance of a rule proposed by EHD should be directed to EHD staff as early in the regulation development process as practicable—there is no need to wait for the hearing. As described earlier, EHD solicits public comment on draft regulations well before filing a petition with the Air Board. EHD staff does respond to written comments and questions throughout the rule development and rulemaking process.
5. The New Mexico Legislature has imposed significant constraints on the Board's authority to adopt regulations or air quality standards that are not required by federal law. A full understanding of any proposed rule will include an attorney's review of the authorizing legislation and the scope of the Board's authority in that area.

B. Engaging Without Frustration

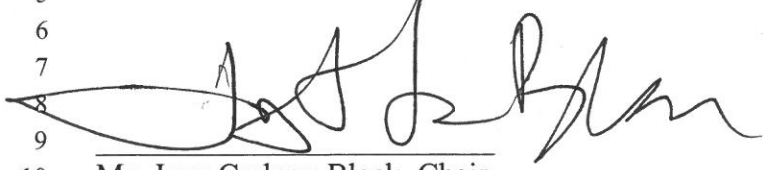
1. Choose your level of engagement in the rulemaking process with care. Levels of your potential engagement are as follows. Here again, advice from an attorney will greatly aid in understanding the process and participating effectively.
 - i. Public commenter: If you wish to comment on a proposed rule without filing any pleadings (i.e. documents required by law for the rulemaking process) with the hearing clerk, you may submit written non-technical public comment of any length to the hearing clerk before or during the hearing, or you may deliver your comment verbally during the hearing. Occasionally time limits are imposed on verbal comments, and you may be cross-examined (asked to answer questions) about your verbal comment. As a public commenter you may not enter scientific or other technical evidence or exhibits into the record.

- ii. Party: If you wish to file pleadings and receive pleadings filed by others, including post-hearing submittals, you must enter an appearance. At the hearing, you may offer non-technical, non-scientific testimony.
 - iii. Party presenting technical testimony: If you wish to present technical or scientific testimony, you must file an NOI. The NOI should be prepared very carefully, as its contents will be reviewed for the scientific basis of the conclusions set out there and the education and expertise of the witnesses. Testimony or exhibits about toxicology must be offered by a toxicologist, for example. Internet research by a layperson will likely not be accepted as having a sufficient basis. Exhibits or testimony not reflected in the NOI will likely be excluded from the record unless offered as rebuttal to another party's evidence. If the hearing officer rules that your evidence should be excluded from consideration by the Board, you should request that it be included in the record as an "offer of proof."
 - iv. Petitioner: Air quality management is an exceptionally complex area of environmental law. Anyone bringing a petition for rulemaking will likely require experienced legal counsel and technical experts to succeed. The air quality rule development process typically occurs over months or years. Although public outreach prior to filing a petition is not legally required, every petitioner should consider stakeholder engagement a critical part of the rulemaking process. Stakeholders include air quality permittees, regulators, neighborhood associations, and civic coalitions. It is appropriate to share draft rules with the New Mexico Environment Department and the U.S. Environmental Protection Agency as well.
2. Understand the reach of the Air Quality Control Board's jurisdiction regardless of your role. The Board's legal authority does not include several issues of importance to people, such as noise, traffic, or property values.
 3. After a petition is filed, and until the rulemaking is concluded (including conclusion of any court action regarding the rulemaking), all input must be submitted through the hearing clerk or during the hearing. No one may have 'ex parte' contact (off-the-record communications) with any Board member or the hearing officer regarding the merits of a rulemaking. Discussions of procedural matters with the hearing officer are appropriate.
 4. Know that before voting the Board reads all submissions which have been filed and either listens to all input during the hearing on a proposed rule or reads the transcript. Form letters may not weigh heavily in the Board's deliberations, but constructive comments from individuals or associations are appreciated and help guide the Board's important policy decisions.

1 Passed and Adopted by the Albuquerque-Bernalillo County Air Quality Control Board this 13th
2 day of December, 2017.


3 **BY A VOTE OF 6 FOR, AND 0 AGAINST.**

4 Absent: *member Dale H. Mack*

5
6
7
8 

9
10 Ms. Jane Cudney-Black, Chair
11 Albuquerque-Bernalillo County
12 Air Quality Control Board

13
14
15 Attest:

16
17 
18
19 Dario Rocha,
20 Secretary to the Air Quality Control Board

Appendix 1: Glossary of Terms

See 20.11.82.7 NMAC – N for all definitions of terms used in the Board’s Rulemaking Regulations.

“**Act**” means the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978.

“**Board**” means the Albuquerque-Bernalillo county air quality control board.

“**Days**” means consecutive days except as otherwise specifically provided.

“**Department**” means the city of Albuquerque environmental health department.

“**Document**” means a pleading or exhibit and any other document including electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images and any other data or data compilations that are stored in any medium from which information can be obtained either directly or, if necessary, after translation, into a reasonably usable form.

“**Environmental justice**” means the fair treatment of all residents (in the city of Albuquerque and Bernalillo county), including communities of color and low income communities, and their meaningful involvement in the development, implementation and enforcement of environmental laws, regulations and policies regardless of race, color, ethnicity, religion, income or education level.

“**Exhibit**” means any document or tangible item submitted for inclusion in the record proper.

“**General public**” means any person attending a rulemaking hearing who has not filed a notice of intent to present technical testimony (NOI) or filed an entry of appearance pursuant to 20.11.82.20 NMAC or 20.11.82.21 NMAC.

“**Governing law**” means the statute, including any applicable case law, which authorizes and governs the decision regarding the proposed regulatory change.

“**Hearing clerk**” means the department employee designated by the director to provide staff support to the board, and is the person designated by the board to maintain the official record of the proceeding.

“**Hearing officer**” means the person who is designated by the board to conduct a hearing pursuant to 20.11.82 NMAC.

“**NOI**” means a notice of intent to present technical testimony which is described in 20.11.82.20 NMAC.

“**Non-technical testimony**” means testimony that is not scientific, engineering, economic or other specialized testimony. A person who provides only non-technical testimony or a non-technical exhibit is not required to file an NOI or entry of appearance pursuant to 20.11.82.20 NMAC or 20.11.82.21 NMAC.

“Participant” means any person who participates in a rulemaking proceeding before the board.

“Party” means:

1. the petitioner;
2. any person who filed an NOI pursuant to 20.11.82.20 NMAC; or
3. any person who filed an entry of appearance pursuant to 20.11.82.21 NMAC.

“Person” means an individual or any entity, including federal, state and local governmental entities, however organized.

“Petitioner” means the person who petitioned the board for the regulatory change that is the subject of the hearing.

“Record proper” or **“record”** means all documents related to the hearing, including documents received or generated by the board before the beginning, or after the conclusion of the hearing, including, but not limited to:

1. the petition for hearing and any response thereto;
2. the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any meeting thereafter at which the proposed regulatory change was discussed;
3. the notice of hearing;
4. proof of publication;
5. NOI(s);
6. statements for the public record;
7. the hearing officer’s report, if any;
8. post-hearing submissions, if allowed;
9. the stenographic transcription or audio recording of the hearing and the stenographic transcription or audio recording or appropriate extract of the audio recording of the meeting at which the board deliberated on the adoption of the proposed regulatory change; and
10. the board’s decision and the reasons therefor.

“Regulation” means a rule, regulation or standard promulgated by the board that affects one or more persons, in addition to the board and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts.

“Regulatory change” means the adoption, amendment or repeal of a regulation.

“Service” means delivering a copy of a document, including a pleading or exhibit, to a party as required by Subsection C of 20.11.82.16 NMAC.

“Technical testimony” means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

“Transcript of proceedings” means the verbatim record, audio recording or stenographic transcription of the proceedings, testimony and argument in the matter, together with all exhibits offered at the hearing, whether or not admitted into evidence, and includes the record of any motion hearings or pre-hearing conferences.

Appendix 2. Example Rulemaking Petition

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

RECEIVED
ENVIRONMENTAL HEALTH
17 AUG 29 PM 2: 51

**IN THE MATTER OF PETITION TO:
AMEND 20.11.41 NMAC, *CONSTRUCTION
PERMITS*, TO ADDRESS CONDITIONAL
APPROVAL BY THE U.S. ENVIRONMENTAL
PROTECTION AGENCY**

AQCB PETITION NO. 2017-2

**ENVIRONMENTAL HEALTH
DEPARTMENT, PETITIONER**

**ENVIRONMENTAL HEALTH DEPARTMENT'S
PETITION TO:
AMEND 20.11.41 NMAC, *CONSTRUCTION PERMITS*,
TO ADDRESS CONDITIONAL APPROVAL
BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

The City of Albuquerque's Environmental Health Department ("EHD") petitions the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board") to authorize a hearing on EHD's petition to amend 20.11.41 NMAC, *Construction Permits*. This action is necessary in order to address a recent conditional approval by the U.S. Environmental Protection Agency ("EPA") of a proposed revision to the New Mexico State Implementation Plan ("SIP") for Albuquerque and Bernalillo County.

As required by 20.11.82.18(B) NMAC, *Rulemaking Procedures – Air Quality Control Board*, a draft of EHD's proposed amendments to 20.11.41 NMAC is attached to this petition, with individual line numbers included. The amendments are marked in red, in legislative edit format (i.e. strikethroughs and underlines to indicate altered language). As EHD explains below, these amendments are necessary in order to fulfill Albuquerque – Bernalillo County's obligations under EPA regulations.

In preparing the draft regulations attached to this petition, EHD sought comment from interested stakeholders. On May 30, 2017, EHD sent copies of proposed draft regulations to Albuquerque and Bernalillo County neighborhood associations; persons holding air quality permits for gas stations or emergency generators; and members of the community on the email list-serve of the Air Board. EHD's cover letter invited these stakeholders to two public comment meetings held on June 28, 2017, one held in the afternoon and one in the evening. Four people attended the afternoon meeting. No one attended the evening meeting. EHD received four written comments on its draft regulations. EHD also consulted with the US Environmental Protection Agency, Region 6. EHD considered all comments received and will discuss these in its hearing testimony.

As reasons for its petition, EHD states as follows.

1. On July 10, 2013, the Air Board adopted amendments to 20.11.41 NMAC. These amendments were submitted to EPA on July 26, 2013 as a proposed revision to the New Mexico SIP.

2. On June 29, 2017, EPA approved all but two of the amendments to 20.11.41 as SIP revisions.¹ In those two instances, EPA noted amended provisions of 20.11.41 NMAC that failed to satisfy federal regulatory requirements. In both instances, EPA approved the provisions on the condition that Albuquerque – Bernalillo County submit further amendments to remedy the deficiencies no later than one year after EPA's conditional approval on June 29, 2017. The amendments that EHD proposes in this petition will address these two issues and meet the EPA deadline.

¹ 82 Fed. Reg. 29,421 (June 29, 2017).

3. Because these regulations are required to comply with federal law, these changes are in the public interest. Because these regulations do not change substantive air quality requirements, EHD does not anticipate any impacts on health, welfare, visibility or property or impacts on technical practicability and economic reasonableness.²

I. CHANGES TO TECHNICAL PERMIT REVISIONS, SECTION 28 AND RELATED CHANGE TO SECTION 13

4. In its first conditional approval, EPA noted a deficiency in 20.11.41.28(B) NMAC. These provisions specify public notice for technical permit revisions. In some cases, technical permit revisions allowed a one pound per hour increase in emissions of pollutants. The public notice procedures required an applicant for a technical permit revision to provide notice of the application to nearby neighborhood associations. EPA found that the one pound per hour emissions increase was significant enough to require notice by "prominent advertisement in the area affected" as required by federal regulations, at 40 CFR § 51.161(b)(3). Notice to neighborhood associations, without more, was not sufficient this requirement. EPA stated that truly insignificant increases, or no emission increase, would allow reduced or eliminated public notice requirements.

5. The purpose of technical permit revisions is to provide a streamlined process to allow truly insignificant changes to permits to be processed quickly so that more staff time could be devoted to more significant changes. In order to meet EPA's conditional approval, EHD proposes to eliminate the one pound per hour increase in emissions and to further narrow technical permit revisions to those actions which do not require air quality dispersion modeling.³

² NMSA 1978, § 74-2-5(E); Revised Ordinances of Albuquerque ("ROA") § 9-5-1-4(E); Bernalillo Code of Ordinances ("Bern. Code") § 30-33(e).

³ 20.11.41.28(B)(1)(b) NMAC, p. 19, lines 40-43; 20.11.41.28(B)(1)(e)(vii), (viii), and (ix) NMAC, p. 20, lines 11-13; 20.11.41.28(B)(1)(g) NMAC, p. 20, lines 19-22.

6. Because no increase in the potential emission rate and no changes that necessitate dispersion modeling will be allowed in a technical permit revision, EHD has also removed the provision for public notice and public information hearings for technical permit revisions.⁴ EHD also proposes minor clarifications and format changes to the requirements for technical permit revisions,⁵ consistent with federal, state, and local law on requirements for permitting.⁶

7. The above changes will allow technical permit revisions to be processed promptly and to serve the purpose originally envisioned—a streamlined process for truly insignificant changes.

II. CHANGES TO ACCELERATED PERMIT REVIEW, SECTION 32

8. In its second conditional approval, EPA noted a typographical error in 20.11.41.32(B) NMAC that resulted in violation of a federal requirement. Section 32(B) of 20.11.41 NMAC requires that, in an accelerated permit review, EHD must "provide the public notice as required by Paragraphs (2) through (9) of Subsection B of 20.11.41.14 NMAC." This language inadvertently left out Paragraph (1) of the cited Subsection, which requires EHD to make a permit application available for public inspection at its offices. EPA pointed out that federal regulations, at 40 CFR § 51.161, require posting of a permit application and the agency's analysis of it in a public place. EHD has explained to EPA that this omission was an inadvertent oversight which occurred during the 2013 adoption of the amended 20.11.41 NMAC.

9. EHD proposes to amend Section 32 by changing "Paragraphs (2) through (9) of Subsection B of 20.11.41.14 NMAC" to "Paragraphs (1) through (9) of Subsection B of

⁴ 20.11.41.13(B) NMAC, p. 8, lines 1-4; 20.11.41.28(B)(2)(a) NMAC, p. 20, line 24; former 20.11.41.28(B)(4) deleted, p. 20, lines 34-36.

⁵ 20.11.41.28(B) NMAC, p. 20, lines 37, 39, 46.

⁶ 40 CFR §§ 51.160 to 51.164; NMSA 1978 § 74-2-7; ROA § 9-5-1-7; Bern. Code § 30-36.

20.11.41.14 NMAC.” The corrected language will require public availability of a permit application and EHD's analysis of it, as provided in 20.11.41.14(B) NMAC.⁷

10. EHD's draft of a proposed 20.11.41 NMAC will address both of EPA's conditional approvals of Part 41.

III. ADDITIONAL PROPOSED CHANGES TO PART 41

11. EHD's draft proposes certain other minor changes, apart from the correction of deficiencies noted by EPA.

12. EHD's draft would amend 20.11.41.14(B)(2) NMAC to allow EHD to provide notice of permit applications on its web page rather than by newspaper publication.⁸ State and local law authorizes this change by authorizing the Air Board to specify public notice requirements for permits.⁹ Federal law authorizes this change because EPA regulations requiring "notice by prominent advertisement" of permit applications include notice by electronic publication as well as print newspaper publication.¹⁰

13. EHD's draft would change the required public notice period for departmental public information hearings from 10 days to 30 days.¹¹ EPA did not require these changes in its conditional approval of June 29, 2017 but recommends them in order to improve public notice provisions. These changes meet applicable federal, state, and local requirements regarding public hearings for permits.¹²

⁷ 20.11.41.32(B) NMAC, p. 24, line 10.

⁸ 20.11.41.14(B)(2) NMAC, p. 10, lines 34-35.

⁹ NMSA 1978 § 74-2-7(B)(5); ROA § 9-5-1-7(B)(3); Bern. Code § 30-36(b)(3).

¹⁰ 40 CFR § 51.161(b)(3) (requiring "notice by prominent advertisement" for minor source permit applications); 81 Fed. Reg. 71,613, 71,617 (Oct. 18, 2016) ("notice by prominent advertisement" means electronic publication as well as newspaper publication).

¹¹ 20.11.41.15(B)(5) NMAC, p. 11, line 53; 20.11.41.15(B)(6) NMAC, p. 12, line 10.

¹² 40 CFR §§ 51.160 to 51.164; NMSA 1978 § 74-2-7(B)(5); ROA § 9-5-1-7(B)(3); Bern. Code § 30-36(b)(3).

14. If the Air Board adopts the above described regulatory changes, EHD also petitions the Air Board to authorize EHD to submit the changes to EPA for approval as proposed revisions to the New Mexico State Implementation Plan under Section 110(a) of the Clean Air Act.

15. The Air Board is authorized to adopt this proposed regulatory change under NMSA 1978 § 74-2-5(B)(1), Revised Ordinances of the City of Albuquerque § 9-5-1-4, and Bernalillo County Ordinances § 30-33.

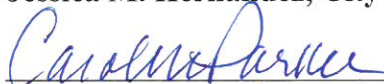
16. EHD estimates that the hearing for this proposed regulatory change will take approximately 30 minutes.

WHEREFORE, EHD requests that the Air Board,

- a. Schedule a hearing to consider the merits of EHD's petition;
- b. Authorize EHD to provide a court reporter for the hearing;
- c. Designate a hearing officer for the hearing.

Respectfully submitted,

CITY OF ALBUQUERQUE
Jessica M. Hernandez, City Attorney

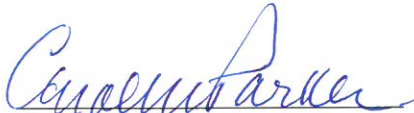


Carol M. Parker
Assistant City Attorney
PO Box 2248
Albuquerque NM 87103
Telephone (505) 768-4500
Facsimile (505) 768-4525
cparker@cabq.gov

CERTIFICATE OF SERVICE

I certify that an original and fifteen copies of this Petition were hand-delivered on August 29, 2017, to:

Andrew Daffern, Hearing Clerk
Albuquerque-Bernalillo County Air Quality Control Board
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103



Carol M. Parker
Assistant City Attorney

348328

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

4
5 **20.11.41.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box
6 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.
7 [20.11.41.1 NMAC - Rp, 20.11.41.1 NMAC, 1/1/14]
8

9 **20.11.41.2 SCOPE:** 20.11.41 NMAC applies to every person who intends to construct, operate, modify,
10 relocate or make a technical revision to a source that is subject to 20.11.41 NMAC or who has authority to operate a
11 source that triggers the emission thresholds in Subsection B of 20.11.41.2 NMAC, except as otherwise provided.

12 **A. Applicability:** Every stationary source subject to 20.11.41 NMAC shall obtain an air quality
13 construction permit from the department as required by 20.11.41 NMAC before:

14 (1) commencing construction of a new stationary source;

15 (2) operating a stationary source that was required by 20.11.41 NMAC to obtain a
16 construction permit before commencing construction or modification, but the stationary source has no
17 active construction permit; or

18 (3) modification of a stationary source.

19 **B. Emission thresholds that require a construction permit before commencing construction,**
20 **modification or operation of a stationary source subject to 20.11.41 NMAC:**

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

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

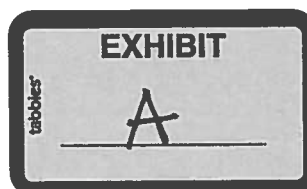
33 (3) If a person proposes to construct a new stationary source or proposes a modification of a
34 stationary source permit, and if the source will emit, when calculated at the air contaminant's potential emission
35 rate, two tons per year or more of a single hazardous air pollutant (HAP) as defined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

39 (4) If a stationary source was not required to obtain a construction permit pursuant to
40 20.11.41 NMAC because the source was operating before August 31, 1972, and if operations of the source have
41 ceased for five or more consecutive years, and if an air contaminant proposed to be emitted by the source triggers
42 the emission thresholds in Paragraphs (1) or (3) of Subsection B of 20.11.41.2 NMAC, then the owner or operator of
43 the source shall apply for and obtain a construction permit as required by 20.11.41 NMAC before the person
44 constructs, modifies or operates the source.

45 (5) If a person proposes to construct a new stationary source or proposes to modify an
46 existing stationary source and if the source will emit, when calculated at the contaminant's potential emission rate,
47 five tons per year or more of lead (Pb) or any combination of lead and its compounds, then the person shall apply for
48 and obtain a construction permit or construction permit modification as required by 20.11.41 NMAC before the
49 person commences construction, modification or operation.

50 (6) If a stationary source was constructed after August 31, 1972 and the source is subject to
51 an existing or new board regulation that includes an equipment emission limitation, the source shall apply for and
52 obtain a construction permit or construction permit modification as required by 20.11.41 NMAC.

53 **C. Source classifications; source types:** If a person proposes to construct a new stationary source,
54 modify an existing stationary source, construct a portable or temporary stationary source, or proposes a technical
55 permit revision and any of the following conditions apply, the person shall apply for and obtain a construction



1 permit, a construction permit modification or technical permit revision approval pursuant to 20.11.41 NMAC before
2 commencing construction or modification of:

3 (1) any equipment or process that is subject or becomes subject to 20.11.63 NMAC, *New*
4 *Source Performance Standards for Stationary Sources*, or 20.11.64 NMAC, *Emission Standards for Hazardous Air*
5 *Pollutants for Stationary Sources*;

6 (2) any stationary source that meets the applicability requirements of 20.11.41 NMAC;
7 however, if the source is also a major stationary source or a major modification as defined in 20.11.60 NMAC,
8 *Permitting in Nonattainment Areas*, then the source shall in addition be subject to 20.11.60 NMAC;

9 (3) any stationary source that meets the applicability requirements of 20.11.41 NMAC;
10 however, if the source is also a major stationary source or a major modification as defined in 20.11.61 NMAC,
11 *Prevention of Significant Deterioration*, then the source shall in addition be subject to 20.11.61 NMAC; and

12 (4) a major source of HAP as defined in 40 CFR Part 63.

13 **D. Sources that become subject to new NSPS or NESHAP:** If a person is operating a source that
14 becomes subject to a new NSPS or NESHAP, the person shall apply for and obtain a construction permit as required
15 by 20.11.41 NMAC.

16 **E. Additional permit requirements:**

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

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

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

31 **F. Exemptions:**

32 (1) 20.11.41 NMAC does not apply to sources within Bernalillo county that are located on
33 Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

34 (2) The following sources and activities shall not be reported in the permit application.
35 Emissions from such activities shall not be included in the calculation of the facility-wide potential emission rate
36 under Paragraphs (1)-(5) of Subsection B and Subsection C of 20.11.41.2 NMAC. The following activities may be
37 commenced or changed without a permit or permit modification under 20.11.41 NMAC if the emissions and
38 activities are not subject to any requirement under a local board regulation, the New Mexico Air Quality Control
39 Act, NMSA 1978, NSPS or NESHAP:

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

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

45 (c) exhaust emissions from forklifts, courier vehicles, front end loaders, graders,
46 carts, and maintenance trucks;

47 (d) use of fire fighting equipment and fire fighting training provided the emissions
48 are not subject to any requirement of a NSPS or NESHAP;

49 (e) government military activities such as field exercises, explosions, weapons
50 testing and demolition to the extent that such activities do not result in visible emissions entering publicly accessible
51 areas;

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

55 (g) use of portable support equipment such as power generation equipment,
56 compressors, heaters, air conditioning and lighting equipment used for activities that include, but are not limited to

1 maintenance and repair if the equipment is used fewer than 12 consecutive months at the same location and the
2 equipment does not directly support an otherwise regulated portable stationary source (such as a screening plant,
3 sand and gravel processing equipment, hot mix asphalt plant, concrete plant or soil vapor extraction system);
4 (h) gases used to calibrate plant instrumentation, including continuous emission
5 monitoring (CEM) systems;
6 (i) emergency stationary reciprocating internal combustion engines; and
7 (j) gasoline dispensing facilities
8 (3) An applicant for a permit is not required to obtain a permit for the following new or
9 modified sources and activities at a facility, but is required to report the following on permit application forms
10 available from the department: fuel burning equipment that is used solely for heating buildings for personal comfort
11 or for producing hot water for personal use and that:

12 (a) uses gaseous fuel and has a design rate of five million BTU per hour or less; or
13 (b) uses distillate oil, but not including waste oil, and has a design rate of one
14 million BTU per hour or less.

15 (4) After a permit has been issued, construction of the sources or commencement of the
16 sources and activities described in Paragraph (3) of Subsection F of 20.11.41.2 NMAC shall comply with the
17 administrative permit revision procedures in Subsection A of 20.11.41.28 NMAC. Emissions from the sources and
18 activities described in Paragraph (3) of Subsection F of 20.11.41.2 NMAC shall not be included in the facility-wide
19 potential emission rate calculation that is described in Subsections B and C of 20.11.41.2 NMAC.
20 [20.11.41.2 NMAC - Rp, 20.11.41.2 NMAC, 1/1/14]

21
22 **20.11.41.3 STATUTORY AUTHORITY:** 20.11.41 NMAC is adopted pursuant to the authority provided in
23 the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control
24 Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 & 4; and the Joint Air Quality Control Board
25 Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.
26 [20.11.41.3 NMAC - Rp, 20.11.41.3 NMAC, 1/1/14]

27
28 **20.11.41.4 DURATION:** Permanent.
29 [20.11.41.4 NMAC - Rp, 20.11.41.4 NMAC, 1/1/14]

30
31 **20.11.41.5 EFFECTIVE DATE:** January 1, 2014, unless a later date is cited at the end of a section.
32 [20.11.41.5 NMAC - Rp, 20.11.41.5 NMAC, 1/1/14]

33
34 **20.11.41.6 OBJECTIVE:** To establish the requirements for obtaining a construction permit, construction
35 permit modification, relocation and administrative and technical permit revision.
36 [20.11.41.6 NMAC - Rp, 20.11.41.6 NMAC, 1/1/14]

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

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

43 B. "Administrative permit revision" or "administrative revision" means a revision to a
44 construction permit for a source that is requested and approved pursuant to Subsection A of 20.11.41.28 NMAC.

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

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

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

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

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

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

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

11 (3) any standard or other requirement:

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

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

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

16 (d) that applies to consumer and commercial products under Section 183(e) of the
17 federal act; or

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

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

23 (5) any national or New Mexico ambient air quality standard;

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

26 (7) any regulation adopted by the board in accordance with the city of Albuquerque and
27 county of Bernalillo joint air quality control board ordinances pursuant to the Air Quality Control Act, and the laws
28 and regulations in effect pursuant to the Air Quality Control Act.

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

31 **I.** **“Commence”, “commencement”, “commencing” or “commences”** means an owner or operator
32 has undertaken a continuous program of construction or modification, has entered into a binding contractual
33 obligation to undertake and complete a continuous program of construction within a reasonable time, or has acquired
34 the right to operate a source that is subject to 20.11.41 NMAC and plans to commence operating the source.

35 **J.** **“Conflict of interest”** for the purposes of accelerated review, means any direct or indirect
36 relationship between the qualified outside firm and the applicant or other interested person that would cause a
37 reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the qualified
38 outside firm in review of the application. A conflict of interest does not include any gifts, gratuities, financial or
39 contractual relationship that totals less than \$100 in value for the 12 month period preceding the department’s
40 receipt of the application. A conflict of interest includes:

41 (1) gifts or gratuities of value that have been exchanged between the qualified outside firm
42 and the applicant;

43 (2) the qualified outside firm having provided goods or services to the applicant within one
44 year before the start, or during the term, of the accelerated review process;

45 (3) an express or implied contractual relationship that exists between the qualified outside
46 firm and the applicant, and the qualified outside firm has provided goods or services to the applicant as a result of
47 the relationship within five years before the start of the accelerated review process; or

48 (4) a current financial relationship between the qualified outside firm and the applicant;
49 current financial relationships include, but are not limited to:

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

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

55 (5) a director, officer or employee of the qualified outside firm that will perform services
56 under a contract pursuant to 20.11.41.32 NMAC, and has one or more personal, business or financial interests or

1 relationships with the applicant or any director, officer or employee of the applicant that would cause a reasonable
2 person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be
3 acting under a contract;

4 (6) a director, officer or employee of the qualified outside firm was a director, officer or
5 employee of the applicant within one year before the start of the accelerated review process;

6 (7) a communication that has occurred between the qualified outside firm and the applicant
7 regarding the substance of the application before a qualified outside firm has been selected to perform accelerated
8 review of an application except as allowed by the department; direct communication between the qualified outside
9 firm and the applicant may take place after the qualified outside firm has been selected by the department;

10 (8) an affiliate of the applicant has any of the above described relationships with the qualified
11 outside firm;

12 (9) an affiliate of the qualified outside firm has any of the above described relationships with
13 the applicant; and

14 (10) an affiliate of the applicant has any of the above described relationships with any affiliate
15 of the qualified outside firm.

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

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

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

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

23 O. "Emission limitation" means a requirement established by EPA, the state implementation plan
24 (SIP), the state act, local ordinance, permit or board regulation that limits the quantity, rate or concentration, or
25 combination thereof, of emissions of regulated air contaminants on a continuous basis, including any requirement
26 relating to the operation or maintenance of a source to assure continuous reduction.

27 P. "Emission unit" or "unit" means any article, machine, equipment, contrivance, process or
28 process line that emits or reduces, or may emit or reduce, the emissions of any air contaminant, except from motor
29 vehicles.

30 Q. "EPA" means the United States environmental protection agency.

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

33 S. "Federally enforceable" means all limitations and conditions that are enforceable by the
34 administrator of the EPA, including all requirements adopted pursuant to 40 CFR Parts 60, 61 and 63; all
35 requirements included in any applicable state implementation plan; and any permit requirements imposed pursuant
36 to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40
37 CFR 51.166.

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

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

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

48 (2) routine maintenance, repair or replacement;

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

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

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

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

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

4 V. “National ambient air quality standards” or “NAAQS” means the primary (health based) and
5 secondary (welfare-related) federal ambient air quality standards promulgated by the EPA pursuant to Section 109
6 of the CAA.

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

10 X. “New Mexico ambient air quality standards” or “NMAAQs” means the ambient air quality
11 standards promulgated by the New Mexico environmental improvement board.

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

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

18 AA. “North American industry classification system” or “NAICS” means the industry
19 classification system that is used by the statistical agencies of the United States, is issued by the federal office of
20 management and budget and replaced the standard industrial classification (SIC) system.

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

23 CC. “Owner” means the person or persons who own a source.

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

26 EE. “Permit” means a construction permit for a source or a construction permit modification,
27 relocation, or administrative or technical permit revision that has been issued or approved by the department
28 pursuant to 20.11.41 NMAC. A permit includes constraints, emissions limitations and other conditions and
29 authorizes a person to commence construction, modification, relocation, or technical revision to the permitted source
30 or operation; or commence operation of a facility that contains a source that is subject to 20.11.41 NMAC.

31 FF. “Permittee” means the person who has applied for and has obtained a construction permit for a
32 source that has been issued a permit pursuant to 20.11.41 NMAC.

33 GG. “Portable stationary source” means a source that can be relocated to another operating site with
34 limited dismantling and reassembly, including, as an example, movable sand and gravel processing operations,
35 concrete plants, asphalt plants and soil vapor extraction systems.

36 HH. “Potential emission rate” means the emission rate of a source at its maximum capacity to emit a
37 regulated air contaminant under its physical and operational design, provided any physical or operational limitation
38 on the capacity of the source to emit a regulated air contaminant, (including air pollution control equipment and
39 restrictions on hours of operation or on the type or amount of material combusted, stored or processed), shall be
40 treated as part of its physical and operational design, but only if the limitation or the effect the limitation would have
41 on emissions is enforceable by the department pursuant to the state act or the federal act.

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

46 JJ. “Public information hearing” or “PIH” means the hearing provided by the department pursuant
47 to 20.11.41.15 NMAC during which attendees can ask questions, provide comments and provide information; a PIH
48 is not a hearing on the merits that results in a final decision at the close of the hearing.

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

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

52 MM. “Shutdown” means the cessation of operation of any air pollution control equipment, process
53 equipment or process for any purpose, except routine phasing out of batch process units.

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

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

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

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

17 **RR.** “Technical permit revision” or “technical revision” means a revision to a construction permit
18 pursuant to Subsection B of 20.11.41.28 NMAC.

19 [20.11.41.7 NMAC - Rp, 20.11.41.7 NMAC, 1/1/14]

20
21 **20.11.41.8 VARIANCES:** A person may request a variance from 20.11.41 NMAC in accordance with the
22 procedures established in 20.11.7 NMAC, *Variance Procedure*.

23 [20.11.41.8 NMAC - Rp, 20.11.41.8 NMAC, 1/1/14]

24
25 **20.11.41.9 SAVINGS CLAUSE:** Any amendment to 20.11.41 NMAC that is filed with the state records
26 center and archives shall not affect actions pending for violation of the state act, a city or county ordinance, a prior
27 version of 20.11.41 NMAC, another board regulation or a permit issued by the department. Prosecution for a
28 violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance or regulation
29 in effect at the time the violation was committed.

30 [20.11.41.9 NMAC - Rp, 20.11.41.9 NMAC, 1/1/14]

31
32 **20.11.41.10 SEVERABILITY:** If for any reason any section, paragraph, sentence, clause, wording or
33 application of 20.11.41 NMAC or any federal or New Mexico standards incorporated herein is held unconstitutional
34 or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect
35 the validity or application of remaining provisions of 20.11.41 NMAC.

36 [20.11.41.10 NMAC - Rp, 20.11.41.10 NMAC, 1/1/14]

37
38 **20.11.41.11 DOCUMENTS:** Documents incorporated and cited in 20.11.41 NMAC may be viewed at the
39 Albuquerque environmental health department, One Civic Plaza NW, Albuquerque, NM 87102. Permit
40 applications, supporting documentation, preliminary determinations made by the department, and draft permits, if
41 completed, shall be available for public inspection at the department’s air quality division office at One Civic Plaza
42 NW, Albuquerque, New Mexico 87102.

43 [20.11.41.11 NMAC - Rp, 20.11.41.11 NMAC, 1/1/14]

44
45 **20.11.41.12 FEES FOR PERMIT APPLICATION REVIEW:** An application for a permit shall be
46 accompanied by a check or money order in the amount required by 20.11.2 NMAC, *Fees*. No application shall be
47 complete until the entire fee has been paid. Checks shall be made payable to the city of Albuquerque as required by
48 20.11.2 NMAC, *Fees*.

49 [20.11.41.12 NMAC - Rp, 20.11.41.12 NMAC, 1/1/14]

50
51 **20.11.41.13 APPLICATION FOR PERMIT:**

52 **A. Pre-application requirements:** A person who is seeking a permit pursuant to 20.11.41 NMAC
53 shall contact the department in writing and request a pre-application meeting for information regarding the contents
54 of the application and the application process. The meeting shall include discussion of approved emission factors
55 and control efficiencies, air dispersion modeling guidelines, department policies, air quality permit fees, public
56 notice requirements and regulatory timelines. The department may waive the pre-application meeting requirement.

1 **B. Applicant's public notice requirements:** ~~If the applicant is applying for a technical permit~~
2 ~~revision, then before the applicant submits the application required by Subsection B of 20.11.41.28 NMAC, the~~
3 ~~applicant shall comply with the public notice requirements of Paragraph (1) of Subsection B of 20.11.41.13~~
4 ~~NMAC.]~~ If the applicant is applying for a permit or permit modification, then before the applicant submits the
5 application required by Subsection E of 20.11.41.13 NMAC, the applicant shall comply with the public notice
6 requirements of Paragraphs (1) and (2) of Subsection B of 20.11.41.13 NMAC. If the applicant is applying for a
7 portable stationary source relocation, then the department may require that the applicant comply with these same
8 notice requirements. The applicant shall:

9 (1) provide public notice by certified mail or electronic mail to the designated
10 representative(s) of the recognized neighborhood associations and recognized coalitions that are within one-half
11 mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact
12 information shall be obtained from the most current records of the city of Albuquerque office of neighborhood
13 coordination and the county of Bernalillo zoning, building and planning department; the public notice shall include
14 all information required by Subsection C of 20.11.41.13 NMAC; the applicant may submit a written request to the
15 department proposing an alternative approach to providing public notice if the proposed source or modification is
16 located at a site with large property boundaries or campus-like facilities; the applicant shall obtain prior written
17 approval from the department before using an alternative approach to providing public notice;

18 (2) prior to submitting the application, post and maintain a weather-proof sign provided by
19 the department, posted at the more visible of either the proposed or existing facility entrance or, if approved in
20 advance and in writing by the department, at another location on the property that is accessible to the public; the
21 applicant shall list all information required by Subsection C of 20.11.41.13 NMAC, on the sign; the applicant shall
22 keep the sign posted until the department takes final action on the permit application; if an applicant can establish to
23 the department's satisfaction that the applicant is prohibited by law from posting, at either location required by
24 Paragraph (2) of Subsection B of 20.11.41.13 NMAC, the department may waive the posting requirement and may
25 impose different notification requirements.

26 **C. Additional public notice requirements:** The public notice specified in Paragraphs (1) and (2) of
27 Subsection B of 20.11.41.13 NMAC shall include the following:

28 (1) the applicant's name and address, and the names and addresses of the owner or operator
29 of the source or proposed source;

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

31 (3) the exact location of the source or proposed source;

32 (4) a description of the source and related facility, if any; the nature of the business; the
33 process or the change for which the permit is being requested, including a preliminary estimate of the maximum
34 quantities of each regulated air contaminant the source will emit if the permit is issued and the proposed
35 construction or modification is completed; and, if the source is being modified, the net change in emissions;

36 (5) the maximum and normal operating schedules proposed for the source or facility; and

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

38 **D.** A person who is seeking a construction permit pursuant to 20.11.41 NMAC shall complete a
39 permit application and file one complete original and one duplicate copy with the department. A person who is
40 seeking a general construction permit shall complete the applicable general construction form pursuant to
41 Subsection C of 20.11.41.31 NMAC and file one complete original form and a duplicate copy with the department.
42 All applications shall be submitted with the fee required by 20.11.2 NMAC.

43 **E. Application contents:** The following are the minimum elements that shall be included in the
44 permit application before the department can determine whether the application is administratively complete and
45 ready for technical review. It is not necessary to include an element if the department has issued a written waiver
46 regarding the element and the waiver accompanies the application. However, the department shall not waive any
47 federal requirements. The permit application shall include:

48 (1) a completed permit application form provided by the department;

49 (2) the name, street address and post office address, if any, of the applicant and the names,
50 street addresses and post office addresses, if any, of the owner and all operators of the source if different than the
51 applicant;

52 (3) the date the application was submitted to the department;

53 (4) sufficient attachments, including calculations, computations, EPA-approved air
54 dispersion model as required, or models executed under a protocol as required that has been approved in advance
55 and in writing by the department, and all other analyses used by the applicant to provide information to describe the
56 potential emission rate and nature of all regulated air contaminants that the source may emit, and the actual

1 emissions that the source will emit under routine operations after construction, modification, relocation or technical
2 revision, and estimates of potential emissions during malfunction, startup and shutdown;

3 (5) an operational and maintenance strategy detailing:

4 (a) the steps the applicant will take if a malfunction occurs that may cause emission
5 of a regulated air contaminant to exceed a limit that is included in the permit;

6 (b) the nature of emissions during routine startup or shutdown of the source and the
7 source's air pollution control equipment; and

8 (c) the steps the applicant will take to minimize emissions during routine startup or
9 shutdown;

10 (6) a map, such as a 7.5 minute topographic quadrangle map published by the United States
11 geological survey or a map of equivalent or greater scale, detail and precision, including a city of Albuquerque or
12 county of Bernalillo zone atlas map that shows the proposed location of each process equipment unit involved in the
13 proposed construction, modification, relocation or technical revision of the source;

14 (7) an aerial photograph showing the proposed location of each process equipment unit
15 involved in the proposed construction, modification, relocation or technical revision of the source except for federal
16 agencies or departments involved in national defense or national security as confirmed and agreed to by the
17 department in writing;

18 (8) a complete description of all sources of regulated air contaminants and a process flow
19 diagram depicting the process equipment unit or units at the facility, both existing and proposed, that are proposed to
20 be involved in routine operations and from which regulated air contaminant emissions are expected to be emitted;

21 (9) a full description of air pollution control equipment, including all calculations and the
22 basis for all control efficiencies presented, manufacturer's specifications sheets, and site layout and assembly
23 drawings; UTM (universal transverse mercator) coordinates shall be used to identify the location of each emission
24 unit;

25 (10) a description of the equipment or methods proposed by the applicant to be used for
26 emission measurement;

27 (11) the maximum and normal operating time schedules of the source after completion of
28 construction, modification, relocation or technical revision;

29 (12) any other relevant information as the department may reasonably require;

30 (13) the signature of the applicant, operator, owner or an authorized representative, certifying
31 to the accuracy of all information as represented in the application and attachments, if any;

32 (14) a check or money order for the appropriate application fee or fees required by 20.11.2
33 NMAC, *Fees*; the fees are established to offset some or all of the reasonable costs of the department reviewing and
34 acting upon an application for a permit and implementing and enforcing the terms and conditions of the permit,
35 excluding costs associated with an enforcement action; and

36 (15) documentary proof that the applicant has complied with all public notice requirements, as
37 required by Subsections B and C of 20.11.41.13 NMAC; documentary proof shall include proof of delivery of
38 certified mail or e-mail of the public notice required by Paragraph (1) of Subsection B of 20.11.41.13 NMAC and a
39 photograph of each notice posted as required by Paragraph (2) of Subsection B of 20.11.41.13 NMAC.

40 **F. Changing, supplementing or correcting applications:**

41 (1) Before the department makes a final decision regarding the application, the applicant
42 shall have a duty to promptly supplement and correct information the applicant has submitted in the application to
43 the department. Applicant's duty to supplement and correct the application includes relevant information acquired
44 after the applicant has submitted the application and additional information the applicant otherwise determines is
45 relevant to the application and the department's review and decision.

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

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

53 (1) All records, reports or information relating to permit applications obtained by the
54 department or the board from any person shall be available to the public for inspection and copying, unless a person
55 has made a satisfactory showing to the department or the board, as confirmed and agreed to by the department in
56 writing, that specific items or information or parts thereof, if made public, would divulge: confidential business

1 records, methods or processes entitled to protection as trade secrets; information pertaining to national defense; or
2 information pertaining to national security. If the items or information are specifically marked by the person as
3 confidential at the time of submittal, the department and the board shall then protect the items and information listed
4 in Subparagraphs (a) and (b) of Paragraph (1) of Subsection G of 20.11.41.13 NMAC as confidential and not to be
5 made a part of any public record unless the person expressly agrees, in writing, to its inspection, copying, or
6 publication:

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

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

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

13 (3) The department shall review all claims of confidentiality made by any person pursuant to
14 20.11.41 NMAC and shall notify the person of the department's determination by certified mail or electronic mail in
15 a timely manner and shall include the reasons for the decision. The burden of proof for claims of confidentiality
16 shall be upon the person submitting such claim.

17 (4) The department's determination regarding claims made pursuant to Subsection G of
18 20.11.41.13 NMAC shall be the final administrative determination.

19 (5) The department shall protect information claimed and subsequently found to be
20 confidential in accordance with the provisions of 74-2-11 NMSA 1978 and 18 U.S.C. Section 1905, except that any
21 such record, report or information may be disclosed:

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

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

25 [20.11.41.13 NMAC - Rp, 20.11.41.13 NMAC, 1/1/14; ~~A. XX/XX/XX~~]

26
27 **20.11.41.14 PUBLIC NOTICE BY DEPARTMENT - PUBLIC PARTICIPATION:**

28 A. The department shall maintain a list of all pending applications for permits available for public
29 inspection.

30 B. If the department makes an affirmative administrative completeness determination then:

31 (1) the department shall make the permit application and all supporting documentation
32 available for public inspection at the department's air quality division office at One Civic Plaza NW, Albuquerque,
33 NM 87102;

34 (2) the department shall publish the public notice [~~in the newspaper with the largest general~~
35 ~~circulation in Bernalillo county~~] on the web site of the city of Albuquerque environmental health department; the
36 notice shall state:

37 (a) the applicant's name and address;

38 (b) the proposed or existing location;

39 (c) a brief description of the source and related facility, if any;

40 (d) a brief preliminary summary of proposed emissions and the proposed net
41 emissions increase if a permit modification is proposed;

42 (e) the ambient air quality impact as determined by air dispersion modeling, if
43 required by the department;

44 (f) the location where the permit application and the department's analysis if
45 completed, are available for public review; the notice shall clearly state that any person who does not express such
46 interest in writing prior to the end of the initial 30 day comment period will not receive notification of the
47 availability of the analysis and so alert such a person of the need to express interest in writing if they desire to
48 review and comment on the analysis;

49 (g) that the public has 30 days to submit written comments and evidence to the
50 department regarding the proposed permit or to request a PIH regarding the application or both; the notice shall
51 specify the date by which all comments and evidence or a request for a PIH shall be submitted;

52 (h) that the department shall hold a PIH pursuant to 20.11.41.15 NMAC if the
53 director determines there is significant public interest and a significant air quality issue is involved; and

54 (i) that any person who does not participate in the permitting action will not receive
55 notification of the department's decision regarding the proposed permit, unless the person has delivered a written
56 request for notice to the department;

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

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

7 (5) the department shall send notice of the department's action regarding the permit
8 application and the reasons for the action to every person who participated in the permitting action; a request to
9 inspect or copy shall not be considered participation for the purposes of Paragraph (5) of Subsection B of
10 20.11.41.14 NMAC; the applicant shall be notified by certified mail or electronic mail; all other interested persons
11 who participated shall be notified by regular mail or electronic mail;

12 (6) the department shall provide a copy of the public notice by certified mail or electronic
13 mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, that
14 are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be
15 located; contact information, if available, shall be obtained from the most current records of the city of Albuquerque
16 office of neighborhood coordination and the county of Bernalillo zoning, building and planning department;

17 (7) the department shall mail a copy of the public notice by regular or electronic mail to
18 every person who submits a written request for a copy to the department;

19 (8) the department shall mail a copy of the public notice by regular or electronic mail to the
20 state of New Mexico environment department within five days after the department deems the application complete;
21 the department shall also mail a copy of the public notice by regular or electronic mail to EPA Region VI, if
22 requested; and

23 (9) the department shall mail a copy of the public notice by regular or electronic mail to all
24 municipalities, Indian tribes and counties that are within one-half mile of the exterior boundaries of the property on
25 which the source is or is proposed to be located.

26 C. If a person expresses in writing an interest in the permit application, the department shall:

27 (1) notify that person of the date that the department's analysis was or will be available for
28 review and where the analysis may be obtained; and

29 (2) not issue the permit until at least 30 days after the department's analysis is available for
30 review. During the 30 day period, any person may submit written comments or request a PIH.
31 [20.11.41.14 NMAC - Rp, 20.11.41.14 NMAC, 1/1/14; ~~A. XX/XX/XX~~]
32

33 20.11.41.15 PUBLIC INFORMATION HEARING (PIH):

34 A. Before the department makes a final decision regarding a permit application, the department shall
35 hold a PIH if the director determines that there is significant public interest and a significant air quality issue is
36 involved. A PIH is not an adjudicatory hearing on the merits. The PIH shall be held no fewer than 30 days before
37 the deadline for the department to make a final decision regarding the permit application. The hearing officer shall
38 determine whether to require attendees to be sworn before they can ask questions, provide comments or provide
39 information. During the PIH, attendees can ask questions, provide comments and provide information regarding the
40 requested air quality permitting action, but no final decision shall be made by the department at the close of the
41 hearing.

42 B. The department shall make all arrangements and pay all expenses of the hearing including:

43 (1) arranging for a location for the PIH, which shall be held near the proposed source if
44 reasonably feasible;

45 (2) providing an English-Spanish and Spanish-English translator at the PIH if determined to
46 be necessary by the department;

47 (3) providing a hearing officer; the hearing officer shall preside over the PIH; shall give all
48 attendees present at the hearing a reasonable opportunity to ask questions, provide comments and provide
49 information regarding the requested air quality permitting action and to examine attendees commenting at the
50 hearing; but shall not make a recommendation or a final decision regarding the permit application;

51 (4) requesting that the applicant present its proposal and to answer questions from attendees
52 at the PIH;

53 (5) no fewer than ~~[10]~~ 30 days before the PIH, providing a copy of the public notice by
54 certified mail or electronic mail to the applicant, the designated representative(s) of the recognized neighborhood
55 associations and recognized neighborhood coalitions that are within one-half mile of the exterior boundaries of the
56 property on which the source is or is proposed to be located; contact information, if available, shall be obtained from

1 the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo
2 zoning, building and planning department; the notice shall contain the information required by Paragraphs (1) and
3 (3)-(5) of Subsection C of 20.11.41.13 NMAC, and the name of the contact person, the department and the address
4 to which comments and inquiries may be directed; the notice of the PIH shall be in English and Spanish if the
5 department determines notice in Spanish is necessary; if a PIH notice is returned to the department undelivered, the
6 department shall promptly confirm the address through the appropriate local government entity, and, if an address is
7 available, shall provide a second copy of applicant's PIH notice to the president or vice president of the
8 neighborhood association or neighborhood coalition;

9 (6) publishing public notice of the PIH in the newspaper with the largest general circulation
10 in Bernalillo county no fewer than ~~[10]~~ 30 days before the PIH; the notice shall include the date, time, and location
11 of the PIH, the number of the proposed permit, and a statement that a final decision has not been made by the
12 department regarding the proposed permit;

13 (7) mailing notice of the PIH to all interested persons who have submitted written comments
14 or evidence to the department and to all interested persons who have delivered to the department a written request
15 for notice regarding the application; a request to inspect or copy shall not be considered a written comment for the
16 purposes of Paragraph (7) of Subsection B of 20.11.41.15 NMAC;

17 (8) requiring department staff to attend the PIH; be present during the applicant's requested
18 presentation and the comments and questions by the attendees; and answer questions regarding the application and
19 the permitting process; and

20 (9) recording the PIH and including the recording in the administrative record for the permit
21 application; the department shall provide a duplicate of the recording to any person who requests a copy; the person
22 requesting shall reimburse the department for the cost of the copy before the department makes the copy; the person
23 making the request for a copy may instead provide the department with recording media that meets the department
24 specifications, and the department will not impose a charge for copying; if a person requests a transcript of the
25 hearing (the requestor), the department shall obtain an estimate of the cost of the transcription and inform the
26 requestor; the requestor shall pay the estimated cost before the department orders the transcription; if the actual cost
27 of the transcription is more than the estimate, the requestor shall pay the additional amount before the department
28 provides the transcription; if the actual cost of the transcription is less than the estimate, the department shall
29 reimburse the difference.

30 [20.11.41.15 NMAC - Rp, 20.11.41.15 NMAC, 1/1/14; ~~A. XX/XX/XX~~]

31
32 **20.11.41.16 PERMIT DECISION AND AIR BOARD HEARING ON THE MERITS:**

33 **A.** Within 30 days after the department has received an application for a new permit or permit
34 modification, the department shall review the application and determine whether it is administratively complete.

35 (1) If the application is deemed administratively complete, the department shall send a letter
36 by certified mail or electronic mail to the applicant stating the department's determination.

37 (2) If the application is deemed administratively incomplete or the department determines a
38 different type of permit application is required, the department shall send a letter by certified mail or electronic mail
39 to the applicant stating what additional information or fees are necessary before the department can deem the
40 application administratively complete. The department may require information that is necessary to perform a
41 thorough review of the application including: technical clarifications, emission calculations, emission factor usage,
42 additional application review fees if any are required by 20.11.2 NMAC and new or additional air dispersion
43 modeling. The letter shall state a reasonable deadline for the applicant to deliver the information, fees or air
44 dispersion modeling. The applicant shall deliver the requested information, fees or air dispersion modeling by the
45 deadline set by the department. The department may extend the deadline for good cause as determined by the
46 department. If the department does not receive the additional information, fees or modeling by the deadline, the
47 department may deny the application. If the department has ruled an application administratively incomplete three
48 times, the department shall deny the permit application and send a letter by certified mail or electronic mail to the
49 applicant stating that the permit application has been denied. Fees submitted for processing an application that has
50 been denied shall not be refunded. If the department has denied the application, the applicant may submit a new
51 application and the fee required for a new application.

52 (3) If the department determines the application is administratively complete but no permit is
53 required, the department shall send a letter by certified mail or electronic mail to the applicant informing the
54 applicant of the determination.

55 **B.** Within 90 days after the department has deemed the application administratively complete, the
56 department shall issue the permit, issue the permit subject to conditions or deny the permit as authorized by the state

1 act, unless the director grants an extension for not more than 90 days for good cause, including scheduling a PIH. If
2 an extension of the 90 day deadline is needed to review and make a decision regarding the application, then 90 days
3 after the department has deemed the application administratively complete, the department shall notify the applicant
4 by certified mail or electronic mail that an extension of time is required. The notification shall specify in detail the
5 grounds for the extension.

6 C. The department shall issue the permit, issue the permit subject to conditions or deny the requested
7 permit or permit modification based on information contained in the department's administrative record of the
8 permit application. The administrative record shall consist of the application, all other evidence submitted by the
9 applicant, all evidence or written comments submitted by interested persons, all other evidence considered by the
10 department, a statement of matters officially noticed and, if a PIH has been held, the PIH hearing record. The
11 applicant has the burden of demonstrating that a permit should be issued.

12 D. Every person who participated in a permitting action before the department shall be notified by the
13 department of the action taken and the reasons for the action. A request to inspect or copy information contained in
14 the department's administrative record of the permit application shall not be considered participation for purposes of
15 Subsection D of 20.11.41.16 NMAC. The department shall notify the applicant by certified mail as required by the
16 state act. Applicants that request expedited receipt of the notification instead of receiving notice by certified mail
17 may deliver a written request to the department and have an authorized representative of the applicant pick up the
18 notification at the department. The authorized representative shall acknowledge receipt of the notification in
19 writing. The department shall notify all other participating persons by regular mail sent to the legible address the
20 participating person has provided to the department. Notification by mail shall be deemed complete and received
21 three days after mailing postage paid to the participating person's address provided to the department.

22 E. A person who participated in a permitting action before the department and who is adversely
23 affected by the permitting action may file a petition for hearing before the board. A request to inspect or copy shall
24 not be considered participation for the purposes of Subsection E of 20.11.41.16 NMAC. The petition shall be in
25 writing and shall be delivered to the board within 30 days from the date notice is given of the department's action.
26 The petition shall conform to the requirements of Subsection B of 20.11.81.14 NMAC. The petitioner shall certify
27 that a copy of the petition has been mailed or hand delivered to the applicant if the petitioner is not the applicant. A
28 hearing before the board shall be conducted as required by 20.11.81 NMAC. Unless a timely request for a hearing is
29 made, the decision of the department shall be final.

30 F. If a timely request for a hearing is made, the board shall hold an adjudicatory hearing on the merits
31 within 60 days of receipt of the petition as required by the state act at NMSA 1978, Section 74-2-7(I) and 20.11.81
32 NMAC. In the hearing before the board, the burden of proof shall be on the petitioner as required by the state act at
33 NMSA 1978, Section 74-2-7(K).

34 G. Any person adversely affected by an administrative action taken by the board may appeal in
35 accordance with the state act at 74-2-9 NMSA 1978.
36 [20.11.41.16 NMAC - Rp, 20.11.41.15 NMAC, 1/1/14]

37
38 **20.11.41.17 BASIS FOR PERMIT DENIAL:** After the department has deemed a permit application
39 administratively complete, the department may deny the application if:

40 A. the department determines the proposed construction, modification or technical revision will not
41 meet an applicable standard, rule, regulation, provision or requirement of the federal act, the state act or a board
42 regulation;

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

45 C. the source will emit a hazardous air pollutant for which no NESHAP applies, if the HAP is
46 emitted in a quantity and duration that may cause imminent danger to public health;

47 D. the department determines the construction, modification or technical revision would cause or
48 contribute to ambient concentrations in excess of a prevention of significant deterioration (PSD) increment;

49 E. the department concludes that construction of a proposed new or modified source cannot or will
50 not be completed within a reasonable time as determined by the department;

51 F. the department determines a conflict of interest existed or exists regarding an application that was
52 submitted during accelerated review, as authorized by 20.11.41.32 NMAC;

53 G. the emission data that was submitted by the applicant as part of the application is not acceptable to
54 the department for technical reasons;

55 H. the estimated emissions of air contaminants submitted by the applicant have not been
56 appropriately identified or quantified;

1 I. the issuance of a permit, permit modification or technical revision will not be consistent with
2 achieving progress toward attainment of the state ambient air quality standard that is being exceeded; or

3 J. the department has delivered three written notices requiring the applicant to provide specified
4 information the department needs in order to take final action on the application and the applicant either has not
5 provided the information by the deadline stated in the related notification or the applicant has submitted information
6 that the department has determined to be technically unacceptable; the department may agree in writing to extend
7 the deadline for good cause as determined by the department; a department request for information shall be for
8 information that is necessary for the department to perform a thorough review of the application and to take final
9 action on the application and may include technical clarifications, emission calculations, emission factor usage and
10 replacement of air dispersion modeling.

11 [20.11.41.17 NMAC - Rp, 20.11.41.16 NMAC, 1/1/14]

12
13 **20.11.41.18 APPLICANTS' ADDITIONAL LEGAL RESPONSIBILITIES:** The issuance of a permit
14 does not relieve any person from responsibility for complying with applicable provisions of the federal act, the state
15 act or a regulation of the board.

16 [20.11.41.18 NMAC - Rp, 20.11.41.17 NMAC, 1/1/14]

17
18 **20.11.41.19 PERMIT CONDITIONS:**

19 A. The contents of a permit application specifically identified by the department shall become terms
20 and conditions of the permit.

21 B. The department shall impose conditions upon a permit as authorized by the state act and as the
22 department determines to be appropriate, including:

23 (1) placement of individual emission limits on the source for which the permit is issued, as
24 determined on a case-by-case basis, but the individual emission limits shall be only as restrictive as the more
25 stringent of the following:

26 (a) the extent necessary to meet the requirements of the federal act, state act or
27 board regulations; or

28 (b) the emission rate specified in the permit application;
29 (2) a requirement that the source install and operate control technology, determined on a
30 case-by-case basis, sufficient to meet the requirements of the federal act, state act or board regulations;

31 (3) compliance with applicable NSPS and NESHAP;

32 (4) imposition of reasonable restrictions and limitations to prevent or abate air pollution not
33 relating to emission limits or emission rates; examples include monitoring, recordkeeping and reporting; reporting
34 administrative revisions; notifications; posting of permit; and substitution of equipment not resulting in an increase
35 in emissions;

36 (5) any combination of the above; and

37 (6) in the case of a modification, the requirements of Subsection B of 20.11.41.19 NMAC
38 apply only to the emission units involved in the modification.

39 C. The department may impose additional conditions in order to meet requirements of the federal act,
40 the state act or a board regulation including:

41 (1) a schedule of construction;

42 (2) a condition requiring timely revision of permit terms or conditions;

43 (3) sampling ports of a size, number and location as the department may require;

44 (4) safe access to each port;

45 (5) instrumentation to monitor and record emission data including continuous emission
46 monitoring;

47 (6) any other reasonable sampling, testing and ambient monitoring and meteorological
48 facilities and protocols;

49 (7) periodic testing pursuant to 20.11.41.22 NMAC, *Performance Testing*;

50 (8) maintaining records of the nature and amount of emission;

51 (9) periodic reports to the department regarding the nature and amounts of emissions;

52 (10) maintaining records of air pollution control equipment performance; and

53 (11) monitoring, recordkeeping and reporting for hours of operation, throughput, capacity and
54 other parametric information.

55 D. Every term or condition included in a permit is enforceable to the same extent as a regulation of
56 the board.

1 [20.11.41.19 NMAC - Rp, 20.11.41.18 NMAC, 1/1/14]
2

3 **20.11.41.20 PERMIT CANCELLATION, SUSPENSION OR REVOCATION:**

4 A. The department shall cancel any permit for any source that ceases operation for five years or more,
5 or permanently. Reactivation of any source after the five year period shall require a new permit.

6 B. The department may cancel a permit if the construction or modification is not commenced within
7 two years from the date of issuance or, if during the construction or modification, work is suspended for a total of
8 one year, such cancellation shall be subject to the following procedures:

9 (1) at least 30 days before canceling a permit, the department shall notify the permittee by certified mail of the
10 impending cancellation; upon cancellation, the department shall notify the permittee by certified mail of the
11 cancellation of the permit and the reasons therefor; construction, modification and, if required, interim operation
12 shall cease upon the effective date of cancellation contained in the notice of cancellation; a permittee who has
13 received notice that a permit is or will be cancelled may request a hearing before the board; the request must be
14 made in writing to the board within 30 days after the notice of the department's action has been received by the
15 permittee; unless a timely request for hearing is made, the decision of the department shall be final; and

16 (2) if a timely request for hearing is made, the board shall hold a hearing within 60 days after receipt of the
17 request; the department shall notify the requestor by certified mail of the date, time and place of the hearing; in the
18 hearing, the burden of proof shall be upon the requestor; the board may designate a hearing officer to take evidence
19 in the hearing; based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action
20 of the department; the hearing shall be conducted pursuant to 20.11.81 NMAC.

21 C. As authorized by the state act at NMSA 1978, Section 74-2-12, a violation of a requirement of the
22 state act, a board regulation or a condition of a permit that has been issued pursuant to 20.11.41 NMAC may result
23 in suspension or revocation of the permit. If the department initiates an enforcement action to suspend or revoke a
24 permit, the department and the permittee shall comply with the procedures required by 20.11.80 NMAC,
25 *Adjudicatory Procedures – Administrative Enforcement Hearings by Director*.

26 [20.11.41.20 NMAC - N, 1/1/14]
27

28 **20.11.41.21 PERMITTEE'S OBLIGATION TO INFORM THE DEPARTMENT AND DELIVER AN**
29 **ANNUAL EMISSIONS INVENTORY:**

30 A. After a permit is issued pursuant to 20.11.41 NMAC, the permittee shall inform the department by
31 letter, facsimile or electronic mail of:

32 (1) the date of anticipated initial startup of the source no fewer than 30 days before the
33 anticipated initial startup date;

34 (2) the date of anticipated initial startup of a portable stationary source no fewer than two
35 days before the anticipated initial startup date;

36 (3) the date of actual initial startup of the source or portable stationary source no more than
37 15 days after actual startup has occurred;

38 (4) the date a portable stationary source leaves or returns to Bernalillo county;

39 (5) any change of ownership, operator or permittee no more than 15 days after the change
40 has occurred; and

41 (6) any permit update or correction as required by 20.11.41 NMAC no more than 60 days
42 after the permittee knows or should have known about the condition that requires updating or correction of the
43 permit.

44 B. The permittee shall submit an annual emissions inventory to the department as required by
45 20.11.47 NMAC, *Emissions Inventory Requirements*.

46 [20.11.41.21 NMAC - Rp, 20.11.41.20 NMAC, 1/1/14]
47

48 **20.11.41.22 PERFORMANCE TESTING:**

49 A. Within 60 days after achieving the maximum production rate at which the newly constructed or
50 modified stationary source will be operated, but not later than 180 days after initial startup of the newly constructed
51 or modified source, the owner or operator of the source may be required to conduct a performance test at the
52 permittee's expense and in accordance with methods and under operating conditions approved by the department
53 and to furnish the department with a written report of the results of the test. No more than 30 days after the test is
54 completed, the permittee shall deliver the written report of the test results to the department. The permittee shall
55 allow a representative of the department to be present at the test. The department may require the permittee to

1 repeat the performance tests at the permittee's expense until compliance is demonstrated and testing is performed in
2 a technically satisfactory manner as determined by the department.

3 **B.** The department may require the permittee to perform initial testing or additional testing if the
4 department determines that:

5 (1) an inspection of the source indicates noncompliance with any regulation or permit
6 condition;

7 (2) previous testing indicated noncompliance with emission limits established by the permit;
8 or

9 (3) the test was technically unsatisfactory.

10 **C.** The permittee shall conduct performance testing at the permittee's expense as frequently as the
11 department requires to determine that the source being tested demonstrates compliance with the permit. The
12 department may waive testing; reduce testing frequency; extend testing deadlines; or authorize performance testing
13 at less than 90% of the maximum production rate, rated capacity, or permitted rate if the permittee delivers a written
14 request to the department no fewer than 60 days before the test. The department shall review all requests and notify
15 the permittee of its decision in writing no fewer than 30 days before the performance test. The department's
16 determination shall be final.

17 [20.11.41.22 NMAC - Rp, 20.11.41.21 NMAC, 1/1/14]

18
19 **20.11.41.23 TEMPORARY RELOCATION OF PORTABLE STATIONARY SOURCES:**

20 **A.** Portable aerospace ground equipment exempted by Subparagraph (f) of Paragraph (2) of
21 Subsection F of 20.11.41.2 NMAC and portable support equipment exempted by Subparagraph (g) of Paragraph (2)
22 of Subsection F of 20.11.41.2 NMAC are not subject to the requirements of 20.11.41.23 NMAC.

23 **B.** The permittee of a portable stationary source may submit a written request to the department
24 seeking approval to temporarily relocate and operate the portable stationary source. Temporary relocations shall not
25 exceed a total of 365 consecutive days.

26 **C.** The permittee of a portable stationary source shall not construct or operate at the new location
27 until the department approves the relocation request in writing.

28 **D.** The permittee of a portable stationary source shall submit a relocation application no fewer than
29 45 days before the date the permittee proposes to commence operations at a new location within Bernalillo county.
30 The permittee shall operate the portable stationary source at the proposed new location as required by the permit
31 conditions unless the department imposes additional or more restrictive operational requirements or conditions in
32 writing during the approval process. The relocation application shall:

33 (1) be submitted on forms provided by the department with fee required by 20.11.2 NMAC;

34 (2) include for each process unit an equipment list that shall include make, model and
35 manufacture date; serial number; rated capacity; production rates; and emissions estimates;

36 (3) include a description of all stationary sources that have an air quality source registration
37 or permit, and all residences, offices, schools, community centers and medical facilities that are located within one-
38 quarter of a mile of the proposed new location of the portable stationary source;

39 (4) unless waived in writing by the department, include an EPA-approved air dispersion
40 model executed for the proposed new location that demonstrates compliance with the NAAQS and the NMAAQs;
41 the modeling protocol shall comply with the air dispersion modeling requirements of Paragraph (4) of Subsection E
42 of 20.11.41.13 NMAC;

43 (5) include all information required by 20.11.41.13 NMAC determined to be relevant by the
44 department and all additional information the department reasonably requires; and

45 (6) be signed by the operator, owner or an authorized representative certifying to the
46 accuracy of all information included in the application and any attachments.

47 **E.** The department may take into consideration the proposed duration of operation, the proposed
48 location, the nature and amount of emissions, anticipated public concerns and other relevant factors in determining
49 whether to require public notice as specified in Subsection B of 20.11.41.13 NMAC. At a minimum, at the time the
50 relocation application is submitted, the permittee shall provide proof that a weather-proof sign provided by the
51 department has been posted at the more visible of either the proposed or existing facility entrance or other location
52 on the property boundary. The applicant shall list on the sign all information required by Subsection C of
53 20.11.41.13 NMAC. The weather-proof sign shall remain posted and maintained until the department makes a final
54 decision regarding the location request.

55 **F.** The department may hold a PIH for good cause.

1 **G.** The department may deny the request to relocate the portable stationary source if the relocation
2 application does not include all information required by Subsection D of 20.11.41.23 NMAC, or if the relocation
3 application is submitted to the department fewer than 45 days before the proposed relocation date.

4 **H.** The department shall not approve the relocation if the department determines the relocation will
5 result in an exceedance of any NAAQS or NMAAQs at the proposed new location.

6 **I.** No more than 45 days after the department receives the relocation application, the department
7 shall approve the relocation, deny the relocation, approve the relocation with conditions or hold a PIH regarding the
8 relocation request. The department shall notify the permittee by certified mail regarding the department's decision.

9 **J.** If the stationary source has been issued a permit pursuant to a board regulation but has not been
10 designated in the permit as a portable stationary source, and the source wishes to relocate within Bernalillo county or
11 be classified as a portable stationary source, the request to relocate or reclassify the source shall be treated as a
12 proposed permit modification and the permittee shall comply with the requirements of 20.11.41.29 NMAC.
13 [20.11.41.23 NMAC - N, 1/1/14]

14
15 **20.11.41.24 EMERGENCY PERMITS:**

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

19 **B.** In order to ensure that the public emergency is not worsened by excess emissions or inadequate air
20 pollution control equipment, the department shall verify that the source, when operating in accordance with the
21 permit to be issued, can and will meet all applicable standards, emission limitations and conditions before the
22 department authorizes startup.

23 **C.** If the department makes an affirmative administrative completeness determination regarding a
24 request for an emergency permit and the department decides to issue the emergency permit, then the department
25 shall:

26 (1) make the request for an emergency permit, the issued emergency permit and all
27 supporting documents available for public inspection at the department's air quality division office at One Civic
28 Plaza NW, Albuquerque, New Mexico 87102;

29 (2) publish public notice in the newspaper with the largest general circulation in Bernalillo
30 county; the notice shall state:

31 (a) the applicant's name and address, the proposed or existing location, a brief
32 description of the source, a brief summary of proposed emissions and ambient air quality impacts as determined by
33 air dispersion modeling if required by the department, the department's approval of the request for an emergency
34 permit and that the department has issued the emergency permit;

35 (b) the location where the request for the emergency permit, the emergency permit
36 and the department's analysis are available for public review;

37 (c) that the public has 30 days to submit written comment and evidence to the
38 department regarding the emergency permit, the deadline for submitting written comments and evidence; and

39 (d) that the department shall hold a PIH pursuant to 20.11.41.15 NMAC if the
40 director determines there is significant public interest and a significant air quality issue is involved;

41 (3) provide the notice required by Paragraph (2) of Subsection C of 20.11.41.24 NMAC by
42 regular mail or electronic mail to all individuals and organizations identified on a list maintained by the department
43 of persons who within the previous 12 months have delivered to the department a written request for notice of all
44 applications filed pursuant to 20.11.41 NMAC;

45 (4) provide a copy of the public notice required by Paragraph (2) of Subsection C of
46 20.11.41.24 NMAC by certified mail or electronic mail to the designated representative(s) of the recognized
47 neighborhood associations and recognized coalitions, that are within one-half mile of the exterior boundaries of the
48 property on which the source is or is proposed to be located; contact information, if available, shall be obtained from
49 the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo
50 zoning, building and planning department; and

51 (5) allow all interested persons 30 days from the date the public notice is published to deliver
52 to the department written comment and evidence regarding the emergency permit.

53 **D.** If a person violates a board regulation or permit condition, including failure to apply in a timely
54 manner for a permit, permit modification, relocation or technical revision, then the violation shall not qualify as an
55 emergency for the purposes of 20.11.41.24 NMAC.

1 E. The following requirements shall not apply to emergency permits processed pursuant to
2 20.11.41.24 NMAC: Subsection B of 20.11.41.13 NMAC and Subsections A and B of 20.11.41.16 NMAC.

3 F. The permittee shall not commence emergency construction, modification or relocation until the
4 department has issued an emergency permit.
5 [20.11.41.24 NMAC - Rp, 20.11.41.22 NMAC, 1/1/14]

6
7 **20.11.41.25 NONATTAINMENT AREA REQUIREMENTS:**

8 A. **Applicability:** 20.11.41.25 NMAC applies to:

9 (1) a new source or modification of an existing source that will emit a regulated air
10 contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration
11 established in 20.11.41.33 NMAC, *Significant Ambient Concentrations - Nonattainment*, Table 1, at a location that
12 does not meet the standards incorporated in 20.11.8 NMAC, *Ambient Air Quality Standards*, for that contaminant;

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

18 (3) an existing source that does not propose an increase in emissions but emits or will emit a
19 regulated air contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient
20 concentration included in 20.11.41.33 NMAC, *Significant Ambient Concentrations - Nonattainment*, Table 1, at any
21 location that does not meet the 20.11.8 NMAC standards for that contaminant.

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

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

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

28 (a) 20.11.60.15, *Baseline for Determining Credit for Emission and Air Quality*
29 *Offsets*;

30 (b) 20.11.60.18 NMAC, *Emission Offset Ratio*; and

31 (c) 20.11.60.25 NMAC, *Air Quality Benefit*.

32 C. An existing source that is subject to 20.11.41.25 NMAC shall demonstrate a net air quality benefit
33 of at least a 20 percent reduction in ambient impact for each applicable contaminant. The 20 percent reduction shall
34 be calculated by subtracting the projected source impact from the existing source impact and dividing the result by
35 the existing source impact. The net air quality benefit shall also comply with 20.11.60.25 NMAC, *Air Quality*
36 *Benefit*.

37 [20.11.41.25 NMAC - Rp, 20.11.41.24 NMAC, 1/1/14]

38
39 **20.11.41.26 COMPLIANCE CERTIFICATION:**

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

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

45 [20.11.41.26 NMAC - Rp, 20.11.41.25 NMAC, 1/1/14]

46
47 **20.11.41.27 ENFORCEMENT:** Notwithstanding any other provision in the New Mexico state
48 implementation plan for air quality, any credible evidence may be used to determine whether a person has violated
49 or is in violation of the terms or conditions of a permit issued pursuant to 20.11.41 NMAC, including a permit issued
50 to a source that meets the applicability requirements 20.11.61 NMAC, *Prevention of Significant Deterioration*, or
51 20.11.60 NMAC, *Permitting in Nonattainment Areas*.

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

54 (1) a monitoring or information-gathering method approved for the source pursuant to
55 20.11.42 NMAC and incorporated in a 20.11.42 NMAC operating permit; or

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

3 B. The following are presumptively credible testing, monitoring or information gathering methods:
4 (1) any federally enforceable monitoring or testing method, including methods authorized or
5 required by 40 CFR, parts 51, 60, 61, 63 and 75; and
6 (2) other testing, monitoring or information gathering methods that produce information
7 comparable to information produced by any method authorized by Subsection A of 20.11.41.27 NMAC or
8 Paragraph (1) of Subsection B of 20.11.41.27 NMAC, as determined by the department.
9 [20.11.41.27 NMAC - Rp, 20.11.41.26 NMAC, 1/1/14]

10
11 **20.11.41.28 ADMINISTRATIVE AND TECHNICAL PERMIT REVISIONS:**

12 A. **Administrative permit revision:**

13 (1) An administrative permit revision may be used by the department or requested by a
14 permittee to revise a permit that has been issued pursuant to 20.11.41 NMAC in order to:
15 (a) correct a typographical error;
16 (b) identify a change in ownership, name, address or contact information of any
17 person identified in the permit; or
18 (c) incorporate a change in the permit if the change is limited to retiring an emission
19 unit at the facility, which shall be effective when the department receives written notice that the emission unit has
20 ceased operation; and
21 (d) incorporate a change in the permit to include a source or activity at the facility if
22 the facility or activity is exempted by Paragraph (3) of Subsection F of 20.11.41.2 NMAC.
23 (2) An administrative permit revision shall:
24 (a) not be subject to Subsection B of 20.11.41.13 NMAC, *Applicant's Public Notice*
25 *Requirements*;
26 (b) not be subject to 20.11.41.14 NMAC, *Public Notice by Department - Public*
27 *Participation*;
28 (c) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*; and
29 (d) be submitted on forms provided by the department.
30 (3) When the department receives a revision form, the department shall review the form. If
31 the department determines the revision qualifies as an administrative revision, the department shall file the revision
32 with the permit. However, the procedure authorized by Subsection A of 20.11.41.28 NMAC may not be used to
33 create federally enforceable conditions or emissions limitations to avoid any applicable requirement.

34 B. **Technical permit revision:**

35 (1) A technical permit revision may be requested by a permittee:
36 (a) to incorporate a change in the permit if the change only involves a change in
37 monitoring, record keeping or reporting requirements, if the department determines the change does not reduce the
38 enforceability of the permit;
39 (b) to incorporate a change in the permit that only involves additional equipment
40 with ~~[a potential emission rate of no more than one pound per hour for any pollutant for which a national or New~~
41 ~~Mexico ambient air quality standard has been set or one pound per hour for any VOC if the increase in potential~~
42 ~~emission rate does not result in an exceedance of the applicable ambient standard.] no increase in potential emission~~
43 ~~rate~~;
44 (c) to incorporate a change in the permit if the change only involves incorporating
45 permit conditions, including emissions limitations, but only if the source existed on August 31, 1972, and the source
46 has been in regular operation since that date;
47 (d) if the permittee wishes to impose a voluntary reduction of an emission limitation
48 that was included as a specific permit conditions pursuant to Subsection B of 20.11.41.19 NMAC, *Permit*
49 *Conditions*;
50 (e) to incorporate a change at a facility by replacing an emissions unit for which an
51 allowable emissions limit has been established in the permit, but only if the replacement emissions unit as
52 determined by the department:
53 (i) is equivalent to the replaced emissions unit and serves the same
54 function within the facility and process;
55 (ii) has the same or lower capacity and potential emission rates;

1 (iii) has the same or higher control efficiency and stack parameters that are
2 at least as effective in dispersing air pollutants;
3 (iv) would not result in an increase of the potential emission rate of any
4 other equipment at the facility;
5 (v) is subject to the same or lower allowable emissions limits as the current
6 permit prior to making the replacement and to all other original permit conditions prior to making the technical
7 permit revision request;
8 (vi) will not cause or contribute to a violation of any NAAQS and
9 NMAAQS when operated under applicable permit conditions;
10 (vii) will not require additional permit conditions to ensure the
11 enforceability of the permit, such as additional record keeping or reporting in order to establish compliance; ~~and~~
12 (viii) does not emit a regulated air contaminant not previously emitted; ~~and~~
13 ~~(ix) does not require air dispersion modeling;~~
14 (f) to reduce the potential emission rate of a unit or source, by incorporating terms
15 and conditions in the permit, such as a cap on hours of operation, limitations on throughput of a specific product or
16 products, or limitations on equipment capacity; or
17 (g) to incorporate a change in the permit that only involves the addition of air
18 pollution control equipment or the substitution of a different type of air pollution control equipment to existing
19 equipment if the requested addition or substitution shall not result in an increase in the potential emission rate ~~[of~~
20 ~~more than one pound per hour for any pollutant for which a national or New Mexico ambient air quality standard~~
21 ~~has been set, or one pound per hour for total VOCs if the increase in potential emission rate does not result in an~~
22 ~~exceedence of the applicable ambient standard].~~

23 (2) An application for a technical revision to a permit shall:
24 (a) ~~not~~ be subject to ~~[Paragraph (1) of Subsection B of]~~ 20.11.41.13 NMAC,
25 *Applicant's Public Notice Requirements*;
26 (b) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*;
27 (c) not be subject to 20.11.41.14 NMAC, *Public Notice by Department - Public*
28 *Participation*; and
29 (d) be submitted on forms provided by the department, with all information
30 submitted by the applicant certified as required by Paragraph (13) of Subsection E of 20.11.41.13 NMAC.
31 (3) Within 30 days of receipt of the application, the department shall approve or deny the
32 application for the technical permit revision, or inform the applicant in writing that the request must be submitted as
33 a permit modification.

34 ~~[(4) — If in response to significant public interest the director decides to hold a PIH pursuant to~~
35 ~~20.11.41.15 NMAC, the department shall inform the applicant and conduct the PIH within 90 days of receipt of the~~
36 ~~technical permit revision application.]~~

37 ~~[(5)]~~ (4) The department may deny an application for a technical permit revision or require that
38 the application be submitted as a permit modification if:

39 (a) the ~~proposed~~ revision does not meet the criteria included in Subsection B of
40 20.11.41.28 NMAC;
41 (b) in the judgment of the department, the revision would require a decision on a
42 significant or complex issue, or involve a substantive change; or
43 (c) in the judgment of the department, the permittee has submitted multiple or
44 subsequent applications for technical permit revisions under 20.11.41.28 NMAC that segment a larger revision or
45 modification that otherwise would not be eligible for a technical permit revision.

46 ~~[(6)]~~ (5) The technical permit revision shall become effective when approved in writing by the
47 department. The department shall file the technical permit revision with the permit. However, the procedure
48 established in 20.11.41.28 NMAC may not be used to create federally enforceable conditions or emissions
49 limitations to avoid an applicable requirement.

50 [20.11.41.28 NMAC - N, 1/1/14; ~~A, XX/XX/XX~~]

51
52 **20.11.41.29 PERMIT MODIFICATION:** A person who proposes to modify a stationary source shall
53 comply with all requirements of 20.11.41 NMAC. Applications for permit modifications shall be processed in
54 accordance with all requirements established by 20.11.41 NMAC for permit applications, including public notice,
55 review, fees and hearing procedures.

56 [20.11.41.29 NMAC - N, 1/1/14]

1
2 **20.11.41.30 PERMIT REOPENING, REVISION AND REISSUANCE:**

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

8 (1) additional applicable requirements of the federal Act or the state act become applicable to
9 the source, including excess emission requirements under the Title IV acid rain program;

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

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

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

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

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

27 C. A permit that has been reopened and reissued may be appealed pursuant to 20.11.81 NMAC.
28 [20.11.41.30 NMAC - N, 1/1/14]
29

30 **20.11.41.31 GENERAL CONSTRUCTION PERMITS:**

31 A. **General construction permits:** General construction permits are issued to groups of sources that
32 have similar operations, processes and emissions, are subject to the same or substantially similar requirements and
33 have general construction permit forms that were approved by the department following the process described in
34 Subsections B or C of 20.11.41.31 NMAC. A source that is required to obtain a permit pursuant to 20.11.41 NMAC
35 but does not qualify for a general construction permit shall obtain a construction permit as required by 20.11.41.13
36 NMAC. A general construction permit shall not be issued for a major modification or a major stationary source as
37 defined in either 20.11.60 NMAC, *Permitting in Nonattainment Areas*, or 20.11.61 NMAC, *Prevention of*
38 *Significant Deterioration*, or for a major source as defined in 20.11.42 NMAC, *Operating Permits*.

39 B. **Approval of general construction permit form and revised general construction permit**
40 **form:**

41 (1) The department shall provide notice of a proposed general construction permit form or
42 revised general construction permit form (hereafter, "general construction form") by publication in the newspaper
43 with the largest general circulation in Bernalillo county. The notice shall:

44 (a) provide a description of the groups of sources with similar operations, processes
45 and emissions that are subject to the same or substantially similar requirements and would be able to use the
46 proposed form within Bernalillo county to apply for an air quality permit if the form is approved;

47 (b) state the reason the department proposes approval of the general construction
48 permit form;

49 (c) specify the notification period that the applicant will be required to provide to
50 the public if the proposed form is approved by the department; and stipulate that an applicant shall use the form to
51 apply for a permit; and public notice requirements that shall be met by the source as required by the 'general
52 construction form' shall include at a minimum:

53 (i) provide public notice by certified mail or electronic mail to the
54 designated representative(s) of the recognized neighborhood associations and recognized coalitions, as shown in the
55 most current records of the city of Albuquerque office of neighborhood coordination and the Bernalillo County
56 zoning, building and planning department, within one-half mile of the exterior boundaries of the property on which

1 the source is or is proposed to be located; the applicant may submit a written request to the department proposing an
2 alternative approach to providing public notice if the proposed source or modification is located at a site with large
3 property boundaries or campus-like facilities; the applicant shall obtain prior written approval from the department
4 for any alternative approach to provide public notice; the public notice shall include all the information required by
5 Subsection C of 20.11.41.13 NMAC; and

6 (ii) prior to submitting the application, post and maintain a weather-proof
7 sign provided by the department, posted at the more visible of either the proposed or existing facility entrance or
8 another location on the property that is accessible to the public, if approved in advance and in writing by the
9 department; the applicant shall list on the sign all information required by Subsection C of 20.11.41.13 NMAC; the
10 applicant shall keep the sign posted until the department takes final action on the permit application; if an applicant
11 can establish to the department's satisfaction that the applicant is prohibited by law from posting at either location
12 required by Paragraph (2) of Subsection B of 20.11.41.13 NMAC, the department may waive the posting
13 requirement and may impose different notification requirements;

14 (d) provide a brief summary of the procedure that will be followed if an individual
15 application is submitted on the proposed form;

16 (e) describe the location where the proposed general construction permit form may
17 be obtained;

18 (f) state that the public has 30 days to submit written comments and evidence to the
19 department regarding the proposed general construction permit form; and

20 (g) state that the department shall hold a PIH pursuant to 20.11.41.15 NMAC if the
21 director determines there is significant public interest and a significant air quality issue is involved.

22 (2) The department shall provide the notice required by Paragraph (1) of Subsection B of
23 20.11.41.31 NMAC by regular mail or electronic mail to all individuals and organizations identified on a list
24 maintained by the department of persons who have stated in writing a desire to receive notices of all applications
25 filed pursuant to 20.11.41 NMAC.

26 (3) Each general construction permit form shall:

27 (a) describe which sources may qualify to apply for the general construction permit;
28 and

29 (b) specify the contents required for a complete application for the general
30 construction permit; in the general construction permit form, the department may provide for an application that
31 deviates from the requirements of 20.11.41.13 NMAC, if the application includes:

32 (i) all information necessary to determine qualification for, and to assure
33 compliance with, the general construction permit; and

34 (ii) applicant's public notice requirements pursuant to Subparagraph (c) of
35 Paragraph (1) of Subsection B of 20.11.41.31 NMAC and a statement that any person may provide written comment
36 to the department within 15 days of receipt of the public notice;

37 (c) contain permit terms and conditions that apply to all sources that are issued the general
38 construction permit, including:

39 (i) sufficient terms and conditions to assure that all sources permitted and
40 operating in accordance with the general construction permit will meet all applicable requirements of the federal act,
41 the state act and board regulations, including 20.11.63 NMAC, *New Source Performance Standards For Stationary*
42 *Sources*, and 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants For Stationary Sources*, and will
43 not cause or contribute to air contaminant levels in excess of any NAAQS or NMAAQs; and

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

48 (iii) as determined appropriate by the department, terms and conditions to
49 address and report emissions that occur during upsets, startups and maintenance; and

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

53 (4) Before the department makes a final decision regarding a general construction permit
54 form, the department shall hold a PIH if the director determines that there is significant public interest and a
55 significant air quality issue is involved. A PIH is not an adjudicatory hearing on the merits. During the PIH,
56 attendees can ask questions, provide comments and provide information regarding the general construction permit

1 form, but no final decision shall be made by the department at the close of the hearing. The department shall make
2 all arrangements and pay all expenses of the hearing including:

3 (a) arranging a location for the PIH;
4 (b) providing a hearing officer; the hearing officer shall preside over the PIH, shall
5 give all attendees present at the hearing a reasonable opportunity to ask questions, provide comments and provide
6 information regarding the general construction permit form and to examine attendees commenting at the hearing, but
7 shall not make a final recommendation or a final decision regarding the permit application;

8 (c) publishing public notice of the PIH in the newspaper with the largest general
9 circulation in Bernalillo county no fewer than 10 days before the PIH; the notice shall include the date, time, and
10 location of the PIH, a description of the general construction permit form, and a statement that a final decision has
11 not been made by the department regarding the general construction permit form;

12 (d) mailing notice of PIH to all interested persons who have submitted written
13 comments or evidence to the department and to all interested persons who have delivered to the department a written
14 request for notice regarding the general construction permit form; a request to inspect or copy shall not be
15 considered a written comment for the purposes of Subparagraph (d) of Paragraph (4) of Subsection B of 20.11.41.31
16 NMAC;

17 (e) requiring department staff to attend the PIH and be present during comments
18 and questions by the attendees; and

19 (f) recording the PIH and including the recording in the administrative record
20 regarding the general construction permit form; the department shall provide a duplicate of the recording to any
21 person who requests a copy; the person requesting shall reimburse the department for the cost of the copy before the
22 department makes the copy; the person making the request for a copy may instead provide the department with
23 recording media that meets the department specifications, and the department will not impose a charge for copying;
24 if a person requests a transcript of the hearing (the requestor), the department shall obtain an estimate of the cost of
25 the transcription and inform the requestor; the requestor shall pay the estimated cost to the department before the
26 department orders the transcription; if the actual cost of the transcription is more than the estimate, the requestor
27 shall pay the additional amount before the department provides the transcription to the requestor; if the actual cost of
28 the transcription is less than the estimate, the department shall reimburse the difference.

29 (5) The department may adopt the proposed general construction permit form or a
30 substantially similar form if the requirements of Subsection B of 20.11.41.31 NMAC have been met.

31 **C. Transition schedule for general construction permit form revision:** When the department
32 revises a general construction permit form, the department shall include a reasonable transition schedule before an
33 existing source must comply.

34 **D. Non-substantive changes:** The department may make non-substantive changes to a general
35 construction form without complying with Subsection B of 20.11.41.31 NMAC. Examples of non-substantive
36 changes include correcting typographical or grammatical errors or adding clarification to instructions. When the
37 department makes a non-substantive change to the form the department may change the date of the form to identify
38 the new version.

39 [20.11.41.31 NMAC - N, 1/1/14]

40
41 **20.11.41.32 ACCELERATED REVIEW OF APPLICATION:**

42 **A. Request for accelerated review of application:** As provided by the state act at NMSA 1978
43 Section 74-2-7(B)(8) and (9), an applicant may request accelerated review if the applicant complies with the
44 following requirements and all other requirements of 20.11.41.32 NMAC:

- 45 (1) 20.11.41.12 NMAC, *Fees for Permit Application Review*;
46 (2) 20.11.41.13 NMAC, *Application for Permit*;
47 (3) 20.11.41.15 NMAC, *Public Information Hearing*;
48 (4) 20.11.41.16 NMAC, *Permit Decisions and Air Board Hearing on the Merits*;
49 (5) 20.11.41.18 NMAC, *Applicant's Additional Legal Responsibilities*;
50 (6) 20.11.41.19 NMAC, *Permit Conditions*;
51 (7) 20.11.41.20 NMAC, *Permit Cancellation, Suspension or Revocation*;
52 (8) 20.11.41.21 NMAC, *Permittee's Obligation to Inform the Department and Deliver an*
53 *Annual Emissions Inventory*;
54 (9) 20.11.41.22 NMAC, *Performance Testing*;
55 (10) 20.11.41.23 NMAC, *Temporary Relocation of Portable Stationary Sources*;
56 (11) 20.11.41.24 NMAC, *Emergency Permits*;

- (12) 20.11.41.25 NMAC, *Nonattainment Area Requirements*;
- (13) 20.11.41.26 NMAC, *Compliance Certification*;
- (14) 20.11.41.27 NMAC, *Enforcement*;
- (15) 20.11.41.28 NMAC, *Administrative and Technical Permit Revisions*;
- (16) 20.11.41.29 NMAC, *Permit Modification*;
- (17) 20.11.41.30 NMAC, *Permit Reopening, Revision and Reissuance*;
- (18) 20.11.41.31 NMAC, *General Construction Permits*; and
- (19) 20.11.41.33 NMAC, *Significant Ambient Concentrations - Nonattainment*.

B. Public notice provided by the department: The department shall provide the public notice as required by Paragraphs [(2)] (1) through (9) of Subsection B of 20.11.41.14 NMAC.

C. Qualified outside contractors:

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

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

- (a) legally qualified to contract with the department; and
- (b) qualified to assist the department in review of permit applications, as determined

by the department.

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

D. Requests for accelerated review:

(1) An applicant for a permit pursuant to 20.11.41 NMAC may request accelerated permit review of the application by a qualified outside contractor. Applications for accelerated review shall be preceded by a pre-application meeting between the applicant and the department. Requests for accelerated review shall not be granted unless there is at least one qualified outside contractor under contract with the department as required by Paragraph (3) of Subsection C of 20.11.41.32 NMAC. If there are no persons under contract to provide accelerated review, the department shall review the application in accordance with 20.11.41.16 NMAC.

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

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

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

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

- (a) a statement of interest;
- (b) a statement of qualifications for the specific application;
- (c) an estimate of:
 - (i) the cost for the review;
 - (ii) the schedule for the review; and
- (d) a notarized affidavit attesting that no conflict of interest exists regarding the

specific permit application.

(6) The department shall review the submittals and determine which persons qualify to review a specific application.

(7) If no qualified outside person meets the requirements of Paragraph (5) of Subsection D of 20.11.41.32 NMAC, the department shall impose the accelerated review filing fee and the permit application review fee required by 20.11.2 NMAC and review the application on an accelerated schedule without the assistance of a qualified outside contractor and as required by 20.11.41.16 NMAC.

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

1 application for accelerated review is administratively complete.

2 **(9) Applicant's responsibilities for response to bid summary:**

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

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

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

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

16 **(10) Department's selection of qualified outside contractor:**

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

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

27 **E. Disclosure of conflict of interest during accelerated review:**

28 **(1)** The applicant and the qualified outside contractor have a continuing obligation to
29 investigate potential conflicts of interest and to immediately disclose any conflict of interest to the department in
30 writing. If a conflict of interest is not disclosed as required by Subparagraph (d) of Paragraph (5) of Subsection D of
31 20.11.41.32 NMAC and is later disclosed or discovered, the department may:

32 **(a)** deny the application pursuant to Subsection F of 20.11.41.17 NMAC;
33 **(b)** terminate accelerated review and review the application pursuant to 20.11.41.16
34 NMAC; or

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

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

41 **F. Issuance of a permit after accelerated review:**

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

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

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

54 [20.11.41.32 NMAC - N, 1/1/14; A, XX/XX/XX]

55
56 **20.11.41.33 SIGNIFICANT AMBIENT CONCENTRATIONS - NONATTAINMENT**

1

Pollutant	Averaging Time					
	Annual	24-hr	8-hr	3-hr	1-hr	1/2-hr
TSP	1.0 µg/m ³	5.0 µg/m ³	--	--	--	--
PM ₁₀	1.0 µg/m ³	5.0 µg/m ³	--	--	--	--
SO ₂	1.0 µg/m ³	5.0 µg/m ³	--	25 µg/m ³	--	--
H ₂ S	--	--	--	--	1.0 µg/m ³	5.0 µg/m ³
CO	--	--	0.5 mg/m ³	--	2.0 mg/m ³	--
NO ₂	1.0 µg/m ³	5.0 µg/m ³	--	--	--	--
Non-Methane Hydrocarbons	--	--	--	5.0 µg/m ³	--	--

2 [20.11.41.33 NMAC - Rp, 20.11.41.27 NMAC, 1/1/14]

3

4 **20.11.41.34 PERMIT STREAMLINING SOURCE CLASS CATEGORIES: [RESERVED]**

5 [20.11.41.34 NMAC - N, 1/1/14]

6

7 **HISTORY OF 20.11.41 NMAC:**

8 **Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of
9 public records - State records center and archives.

10 Resolution No. 1, Air Pollution Control Regulations Of The Albuquerque Bernalillo County Air Quality Control
11 Board, 8/6/71;

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

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

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

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

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

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

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

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

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

21

22 **History of Repealed Material:**

23 20.11.41 NMAC, Authority To Construct, filed 8/30/02 - Repealed effective 1/1/14.

24

25 **Other History:**

26 Regulation No. 20, Authority-To-Construct Permits, filed 12/16/94 was renumbered and reformatted into first

27 version of the New Mexico Administrative Code as 20 NMAC 11.41, Authority-To-Construct, filed 10/27/95.

28 20 NMAC 11.41, Authority-To-Construct, filed 10/27/95 was renumbered, reformatted, amended and replaced by

29 20.11.41 NMAC, Authority To Construct, effective 10/1/02.

30 20.11.41 NMAC, Authority To Construct, filed 8/30/02 was repealed and replaced by 20.11.41 NMAC,

31 Construction Permits, effective 1/1/14.

32

33

34

35

36

37