

**ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE HEARING ON
THE MERITS REGARDING THE DENIAL OF
A WOOD BURNING EXEMPTION**

Michael Fulp, Petitioner

AQCB Petition No. 2013-2

City of Albuquerque

Hearing Documents

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February 13, 2013

City of Albuquerque
Law of the Case, Exhibits and Proposed Resolution & Final Order

Tab	Document	Description
1.	Law of the Case	20.11.22 NMAC, Woodburning
2.	Law of the Case	20.11.1 NMAC, General Provisions
3.	Request for Hr.	12-26-12 letter to Albuquerque Env. Health Dept. Director appealing denial of wood burning exemption
4.	City Ex. 1	Charles A. Aragon, City EHD Air Quality Division Field Operations Officer
5.	City Ex. 2	"Exemption Request Form - 20.11.22 NMAC" signed 9-6-12 by Petitioner Michael Fulp
6.	City Ex. 3	12-7-12 2:50 pm typed note
7.	City Ex. 4	12-12-12 "Wood Burning Exemption Request Denial" for exemption period Oct. 2012-Feb. 2013
8.	City Ex. 5	1-3-13 Email to Reyes & Aragon from Gonzales
9.	City Ex. 6	1-7-13 handwritten note on 3" x 3" Post it
10.	City Ex. 7	1-11-13 letter to Petitioner Fulp from Aragon re No-Burn Exemption Request
11.	Air Bd Web Page	Information on 2/13/13 Fulp Hearing
12.	City-proposed	Resolution Sustaining City's Denial of Exemption
13.	City-proposed	Final Order Sustaining City's Denial of Exemption

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 22 WOODBURNING

20.11.22.1 ISSUING AGENCY: Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
 [11/27/91. .12/1/95; 20.11.22.1 NMAC – Rn, 20 NMAC 11.22.I.1, 10/1/02]

20.11.22.2 SCOPE: This Part is applicable to woodburning sources within Bernalillo County.

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

B. Case-by-Case Exceptions: The following exemptions may be granted by the Director.

(1) A sole source exemption if the Director determines that a solid fuel heating device is the sole source of heat for the building in which it is situated. New sole source exemptions shall not be issued after December 31, 1990 unless approved in writing by the Director for good cause. Sole source exemptions issued prior to December 31, 1990 may be renewed annually.

(2) A temporary exemption for a specified period in the event of failure of the oil, natural gas, electricity or propane heating system.

(3) An economic or health exemption for economic or health reasons if the Director determines that the applicant qualifies for financial assistance according to the economic guidelines established under the Food Stamps, Medicaid or low income energy assistance programs as administered by the Income Support Division of the New Mexico Human Services Department, or equivalent program, as determined by the Director, or if the Director determines that failure to grant an exemption would endanger the health of the applicant.

C. Exemption Conditions: In no event shall an exemption be issued for more than 150 days. All exemptions shall be effective for only one no-burn season, unless a different period is specified in the exemption. An exemption only exempts a person from the requirements of Section 20.11.22.13 NMAC; a person holding an exemption must comply with all other provisions of this Part. An exemption may include conditions, which will be established by the Director and will be stated in the exemption. A violation of an exemption condition is a violation of this Part and also may be cause for revocation of the exemption by the Director. Each person seeking an exemption shall do so by filing an acceptable written application with the Director on the form required by the Director. Applications shall include:

(1) the applicant's name and mailing address;

(2) the address for which the exemption is sought;

(3) the reasons for seeking the exemption; and

(4) the supporting documentation required by the Director to verify the applicant's qualification for an

exemption.

D. Following receipt of the application for exemption, the Director shall either grant the exemption, grant the exemption subject to conditions, or deny the exemption. The applicant shall be notified in writing of the decision of the Director.

E. In the event an applicant for an exemption is not satisfied with the Director action, the decision may be appealed to the Board. Such appeal shall be in writing and shall be submitted to the Director within 15 days after the Director mails or delivers the decision letter to the applicant of the Director's decision. The appeal shall be considered by the Board at the next regularly scheduled business meeting at which a quorum is present. The decision of the Board shall be final.

[11/27/91. .12/1/95; 20.11.22.2 NMAC – Rn, 20 NMAC 11.22.I.2, 10/1/02]

20.11.22.3 STATUTORY AUTHORITY: This Part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

[11/27/91. .12/1/95; 20.11.22.3 NMAC – Rn, 20 NMAC 11.22.I.3, 10/1/02]

20.11.22.4 DURATION: Permanent.

[12/1/95; 20.11.22.4 NMAC – Rn, 20 NMAC 11.22.I.4, 10/1/02]

20.11.22.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.

[12/1/95; 20.11.22.5 NMAC – Rn, 20 NMAC 11.22.I.5, & A, 10/1/02]

20.11.22.6 OBJECTIVE: The objective of this Part is to reduce the levels of carbon monoxide and particulate matter in the ambient air during atmospheric conditions that the Director concludes may not adequately disperse wood smoke, and to minimize the adverse health effects and nuisance effects that result from woodburning.

[11/27/91. . .12/1/95; 20.11.22.6 NMAC – Rn, 20 NMAC 11.22.I.6, 10/1/02]

20.11.22.7 DEFINITIONS: In addition to the definitions in Section 20.11.22.7 NMAC the definition in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this Part shall govern.

A. **“Burn Down”** means that period of time, not to exceed three (3) hours, after a no-burn period is announced by the Director, within which period a person operating a solid fuel heating device must cease combustion within any solid fuel heating device by withholding fuel or modifying the air-to-fuel ratio.

B. **“Inappropriate Fuel”** includes but is not limited to: leaves, grass clippings, green plants, refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, waste oil, liquid or gelatinous hydrocarbons, tar, paints and solvents, chemically soaked wood, wood with a moisture content or greater than 30%, plastic or rubber, office records, sensitive or classified wastes, or other materials which are difficult to burn without producing vast amounts of noxious and toxic fumes or dense smoke.

C. **“New Wood Heater”** means:

(1) a wood heater that is sold at retail; is obtained as a result of a bargain or exchange; or is new and is given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer; and

(2) a wood heater which has not been used to an extent which as resulted in the heater being considered "used" or "second hand" within the ordinary meaning of those terms.

D. **“Sole Source”** means one or more solid fuel heating devices installed for the purpose of space heating and which constitute the only source of heat in a building. No solid fuel heating device(s) shall be the sole source of heat in a building if the building is equipped with a furnace or heating system which was designed to utilize oil, natural gas, electricity or propane to heat the building and the furnace or heating system at one time was permanently installed in the building, whether or not the furnace or system presently is connected with or disconnected from its energy source.

E. **“Solid Fuel Heating Device”** means any fireplace, wood heater, wood stove, wood fired boiler, coal fired furnace, coal stove or similar device burning any solid fuel and used inside a building for aesthetic, cooking (excluding commercial cooking) or heating purposes.

F. **“Wood Heater”** means an enclosed woodburning appliance, including a fireplace insert, capable of and intended for space heating or domestic water heating that meets all of the following criteria:

(1) an air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure described in 40 CFR Part 60.534,

(2) a usable firebox volume of less than 0.56 cubic meters,

(3) a minimum burn rate less than 5 kg/hr as determined by the test procedure described in 40 CFR Part 60.534, and

(4) a maximum weight of 800 kg, excluding devices and fixtures that are normally sold separately, such as flue pipe, chimney and masonry components that are not an integral part of the appliance or heat distribution ducting.

G. **“Wood smoke Impacted Area”** means that portion of Bernalillo County that is the most adversely affected by the burning of wood during atmospheric conditions that the Director concludes may not adequately disperse wood smoke. The wood smoke impacted area is delimited on the north and south by the Bernalillo County lines, on the west by the universal transverse meridian (UTM) line 337000mE and on the east by the UTM line 367000mE, Zone 13.

[11/27/91. . .12/1/95; 20.11.22.7 NMAC – Rn, 20 NMAC 11.22.I.7, 10/1/02]

20.11.22.8 VARIANCES: [Reserved]

[12/1/95; 20.11.22.8 NMAC - Rn, 20 NMAC 11.22.I.8, 10/1/02]

20.11.22.9 SAVINGS CLAUSE: Any amendment to 20.11.22 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, or Board Regulation 34, or 20.11.22 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/16/94. . .12/1/95; 20.11.22.9 NMAC – Rn, 20 NMAC 11.22.I.9, 10/1/02]

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

[12/16/94. . .12/1/95; 20.11.22.10 NMAC – Rn, 20 NMAC 11.22.I.10, 10/1/02]

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

[12/1/95; 20.11.22.11 NMAC – Rn, 20 NMAC 11.22.I.11, & A, 10/1/02]

20.11.22.12 SALE OF NEW WOOD HEATERS - CERTIFICATION REQUIRED: No person shall sell, offer for sale, advertise for sale or barter for, exchange or give away any new wood heater unless the wood heater has been emission certified and labeled in accordance with 40 CFR Part 60.530 through 60.539b.

[11/27/91; 20.11.22.12 NMAC – Rn, 20 NMAC 11.22.II.1& Repealed, 10/1/02, Rn, 20 NMAC 11.22.II.1, 10/1/02]

20.11.22.13 NO-BURN PERIODS: From October 1 through February 28, following a burn down period, no person with authority or power to control the operation of a solid fuel heating device shall allow the operation of a solid fuel heating device within the wood smoke impacted area during a no-burn period which as declared by the Director unless an exemption has been obtained or unless the device is a wood heater that has been emission certified by the EPA. No-burn periods shall be declared by the Director upon review of available meteorological data and a determination that expected atmospheric conditions will not adequately disperse wood smoke.

[11/27/91; 20.11.22.13 NMAC – Rn, 20 NMAC 11.22.II.2, 10/1/02]

20.11.22.14 NOTICE REQUIRED: Notice of no-burn periods shall be sufficient if published in a newspaper of general circulation within Bernalillo County, or if presented orally at least three (3) times during a six (6) hour period by at least two (2) radio or television stations operating within Bernalillo County, or if presented to the general public in the form of a recorded telephone message, the telephone number for which is published in the telephone directory or newspaper of general circulation within Bernalillo County.

[11/27/91; 20.11.22.14 NMAC – Rn, 20 NMAC 11.22.II.3, 10/1/02]

20.11.22.15 VISIBLE EMISSION LIMITATIONS:

A. Certified wood heaters may be operated during a no-burn period provided that no visible emissions are produced after a twenty (20) minute period following start up or refueling. To determine compliance with this standard, the Director shall observe the point at which the certified wood heater releases emissions into the ambient air. If the emission point is producing any visible emissions twenty (20) minutes or longer after the initial observation, a violation of this Part has occurred.

B. During a period in which the Director has not declared a no-burn, no person shall operate a solid fuel heating device in a manner which produces emission into the atmosphere if the emissions exceed 30 % opacity twenty (20) minutes or longer after ignition or refueling of the solid fuel burning device. Visible emission opacity shall be determined by an observer certified by the Director. To determine opacity the observer shall:

(1) Use the standard visual method listed in 40 CFR 60, Appendix A, Method 9; or

(2) Use equipment approved by the Director and the EPA if, under the circumstances, the Director and the EPA determines the equipment is as accurate as, or is more accurate than use of the Method 9 procedure.

(3) If condensed water vapor is visible in an exhaust plume, the opacity assessment shall be made at a point consistent with the procedure stipulated in 40 CFR 60, Appendix A, Method 9.

[11/27/91; 20.11.22.15 NMAC – Rn, 20 NMAC 11.22.II.4, 10/1/02]

20.11.22.16 MISFUELING OF SOLID FUEL HEATING DEVICES PROHIBITED:

A. No person shall use a fuel in a solid fuel heating device unless the fuel is a fuel recommended by the solid fuel heating device manufacturer. The person using the solid fuel heating device shall comply with all the manufacturers' installation and operation instructions; failure to do so is a violation of this Part.

B. No person shall burn inappropriate fuel in a solid fuel heating device.

[11/27/91; 20.11.22.16 NMAC – Rn, 20 NMAC 11.22.II.5, 10/1/02]

HISTORY OF 20.11.22 NMAC:

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

Regulation No. 34, Woodburning, 8/24/88

Regulation No. 34, Woodburning, 12/23/88

Regulation No. 34, Woodburning, 6/22/89

Regulation No. 34, Woodburning, 2/22/90

Regulation No. 34, Woodburning, 11/27/91

Regulation No. 34, Woodburning; 12/16/94.

History of Repealed Material: [Reserved]

Other History: Regulation No. 34, Woodburning; filed 12/16/94 was renumbered and reformatted into first version of the New Mexico Administrative Code as 20 NMAC 11.22, Woodburning, filed 10/27/95.

20 NMAC 11.22, Woodburning, filed 10/27/95 was renumbered, reformatted, amended and replaced by 20.11.22 NMAC, Woodburning, effective 10/1/02.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 1 GENERAL PROVISIONS

20.11.1.1 ISSUING AGENCY: Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[6/14/71. . .12/1/95; 20.11.1.1 NMAC - Rn, 20 NMAC 11.01.I.1, 10/1/02; A, 9/14/09]

20.11.1.2 SCOPE:

A. 20.11.1 NMAC is applicable within Bernalillo county.

B. **Exempt:** 20.11.1 NMAC does not apply to sources within Bernalillo county, which are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction.

[12/1/95. . .8/1/96; 20.11.1.2 NMAC - Rn, 20 NMAC 11.01.I.2, 10/1/02; A, 9/14/09]

20.11.1.3 STATUTORY AUTHORITY: 20.11.1 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 & 4; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.

[6/14/71. . .12/1/95; 20.11.1.3 NMAC - Rn, 20 NMAC 11.01.I.3, 10/1/02; A, 7/1/04; A, 9/14/09]

20.11.1.4 DURATION: Permanent.

[12/1/95; 20.11.1.4 NMAC - Rn, 20 NMAC 11.01.I.4, 10/1/02]

20.11.1.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section. The effective date of a specific section is located at the end of that section within the historical brackets. As required by the New Mexico Air Quality Control Act, Chapter 74, Article 2, Section 6 NMSA 1978, no regulation or emission control requirement or amendment thereto, or repeal thereof, shall become effective until 30 days after its filing under the State Rules Act, Chapter 14, Article 4 NMSA 1978.

[12/1/95. . .8/1/96; 20.11.1.5 NMAC - Rn, 20 NMAC 11.01.I.5 & A, 10/1/02; A, 12/1/03; A, 7/1/04; A, 9/14/09]

20.11.1.6 OBJECTIVE: To provide definitions which are generally applicable to Albuquerque - Bernalillo county air quality control board regulations.

[12/1/95; 20.11.1.6 NMAC - Rn, 20 NMAC 11.01.I.6 & A, 10/1/02; A, 7/1/04; A, 9/14/09]

20.11.1.7 DEFINITIONS: The definitions of 20.11.1 NMAC apply unless there is a conflict between definitions in other parts, in which case the definition found in the applicable part shall govern. The definitions include the measurements, abbreviations, and acronyms in Subsection GGGG, of 20.11.1.7 NMAC.

A. **"Abnormal operating conditions"** means the startup or shutdown of air pollution control device(s) or process equipment.

B. **"Administrator"** means the administrator of the United States environmental protection agency or his or her designee.

C. **"Affected source" or "facility"** means any stationary source, or any other source of air pollutants, that must comply with an applicable requirement.

D. **"Air agency", "department" or "EHD"** means the environmental health department (EHD) of the city of Albuquerque. The EHD, or its successor agency or authority, as represented by the department director or his/her designee, is the lead air quality planning agency for the Albuquerque - Bernalillo county nonattainment/maintenance area. The EHD serves as staff to the Albuquerque - Bernalillo county air quality control board, (A-BC AQCB), and is responsible for the administration and enforcement of the A-BC AQCB regulations.

E. **"Air contaminant" or "air pollutant"** means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant; to the extent the EPA has identified such precursor or precursors for the purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N₂), oxygen (O₂), and ethane.

F. **"Air pollution"** means the emission, except as such emission occurs in nature, into the outdoor atmosphere of one or more air contaminants in such quantities and duration as may with reasonable probability

injure human health, animal or plant life, or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.

G. "Air quality control act" means the State of New Mexico Air Quality Control Act, Chapter 74, Article 2, NMSA 1978 as amended.

H. "Air quality control board", "board" or "A-BC AQCB" means the Albuquerque - Bernalillo county air quality control board, which is empowered by federal act, the Air Quality Control Act, and ordinances, to prevent or abate air pollution within the boundaries of Bernalillo county, except for Indian lands over which the board lacks jurisdiction.

I. "Allowable emissions" means:

(1) Any department or federally enforceable permit term or condition which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limits the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous reduction that are requested by the applicant and approved by the department or, determined at the time of issuance or renewal of a permit to be an applicable requirement.

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

J. "Ambient" means that portion of the atmosphere, external to buildings, to which the general public has access.

K. "Applicable requirement" means any of the following (and includes requirements that have been promulgated or approved by the board or EPA through rulemaking):

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

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

(3) any standard or other requirement:

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

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

thereunder;

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

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

(e) of the regulations promulgated to protect stratospheric ozone under Title VI of the federal

act, unless the administrator has determined that such requirements need not be contained in a Title V permit;

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

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

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

(7) any regulation adopted by the board in accordance with the joint air quality control board ordinances pursuant to the Air Quality Control Act, and the laws and regulations in effect pursuant to the Air Quality Control Act.

L. "Breakdown or upset" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, or process equipment, which causes a process to not operate in a normal manner. Failures that are caused by process imbalance, poor maintenance or careless operation are not breakdowns.

M. "Carbon monoxide" or "CO" means a colorless, odorless, poisonous gas composed of molecules containing a single atom of carbon and a single atom of oxygen with a molecular weight of 28.01 g/mole.

N. "Chemical process" means any manufacturing processing operation in which one or more changes in chemical composition or chemical properties are involved.

O. "Coal burning equipment" means any device used for the burning of coal for the primary purpose of producing heat or power by indirect heat transfer in which the products of combustion do not come into direct contact with other materials.

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

Q. "Construction" means fabrication, erection, or installation of an affected facility.

R. “**Crematory**” means any combustion unit designed and used solely for cremating human or animal remains or parts and tissues thereof, and other items normally associated with the cremation process, but not including pathological waste.

S. “**Department**” means the Albuquerque environmental health department, which is the administrative agency of the Albuquerque - Bernalillo county air quality control board.

T. “**Director**” means the administrative head of the Albuquerque environmental health department or a designated representative(s).

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

V. “**EPA**” means the United States environmental protection agency or the EPA's duly authorized representative.

W. “**Excess emissions**” means the emission of an air contaminant, including a fugitive emission, in excess of the quantity, rate, opacity or concentration specified by an air quality regulation or permit condition.

X. “**Excess emissions report**” means a report submitted by a stationary source at the request of the department in order to provide data on the source's compliance with emission limits and operating parameters.

Y. “**Federal act**”, “**act**” or “**CAA**” means the Federal Clean Air Act, 42 U.S.C. Section 7401 through 7671 et seq., as amended.

Z. “**Federal class I wilderness areas**” means areas designated by the EPA as such. Federal class I wilderness areas within 100 kilometers of Bernalillo county are Bandelier wilderness, Pecos wilderness, and San Pedro Parks wilderness.

AA. “**Fluid**” means either of the two states of matter, liquid or gaseous.

BB. “**Fugitive emissions**” means any emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening or is not otherwise collected, unless the emission is otherwise regulated by the federal act, the Air Quality Control Act, or the laws and regulation in effect pursuant to the act.

CC. “**Greenhouse gases**” or “**GHGs**” means the air pollutant defined in § 86.1818–12(a) of Chapter I of Title 40 of the CFR, as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

DD. “**Grain**” means that unit of weight, which is equivalent to 0.0648 grams.

EE. “**Hazardous air pollutant**” means an air contaminant which has been classified pursuant to the federal act, the Air Quality Control Act, or laws and regulations in effect pursuant to the act.

FF. “**Hydrocarbons**” or “**HC**” means any chemical compound of a class of aliphatic, cyclic, or aromatic chemical compounds containing mostly hydrogen and carbon. Hydrocarbons are highly reactive in the presence of nitrogen oxides and sunlight. All are precursors to more serious air pollutants such as ozone and nitrogen dioxide.

GG. “**Hydrogen sulfide**” or “**H₂S**” means the chemical compound containing two atoms of hydrogen and one of sulfur with a molecular weight of 34.07 g/mole.

HH. “**Incinerator**” means any furnace used in the process of burning solid waste for the purpose of reducing the volume, by removing combustible matter.

II. “**Inedible animal by-product processing**” means operations primarily engaged in rendering, cooking, drying, dehydration, digesting, evaporating or concentrating of animal proteins and fats.

JJ. “**Kraft mill**” means any pulping process, which uses an alkaline solution for a cooking liquor.

KK. “**Lead**” or “**Pb**” means a heavy metal, with a molecular weight of 207.19 g/mole that is hazardous to health if breathed or swallowed.

LL. “**Malfunction**” means any sudden and unavoidable failure of air pollution control equipment or process equipment beyond the control of the owner or operator, including malfunction during startup or shutdown. A failure that is caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered a malfunction.

MM. “**Modification**” means any physical change in or change in the method of operation of a source that results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or that results in the emission of any regulated air contaminant not previously emitted, but does not include:

- (1) a change in ownership of the source;
- (2) routine maintenance, repair or replacement;

(3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the environmental improvement board or the local board or pursuant to the federal act; or

(4) unless previously limited by enforceable permit conditions:

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

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

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

NN. "New source" means any stationary source, the construction or modification of which is commenced after the filing of a regulation applicable to the stationary source.

OO. "Nitrogen dioxide" or "NO₂" means a reddish brown, poisonous gas composed of molecules containing a single atom of nitrogen and two of oxygen with a molecular weight of 46.0 g/mole.

PP. "Nitrogen oxides or NO_x" is a class of chemicals containing varying quantities of nitrogen and oxygen that are created from combustion processes taking place at high temperatures and high pressures (e.g., inside automotive engine cylinders or in high temperature boilers). Examples of nitrogen oxides are NO, NO₂, NO₃, N₂O₂, and N₂O₅. Nitrogen oxides are also referred to as oxides of nitrogen.

QQ. "NMAC" means New Mexico administrative code, which contains the rules adopted by all rulemaking agencies of the state of New Mexico and the rules adopted by the A-BC AQCB.

RR. "Open burning" means the combustion of any material without the following characteristics:

(1) control of combustion air to maintain adequate temperature for efficient combustion;

(2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(3) emission controls for the gaseous combustion products.

SS. "Operator" means the person(s) responsible for the overall operation of a source.

TT. "Owner" means the person(s) who owns a source or part of a source.

UU. "Ozone or O₃" means a pungent, colorless gas composed of molecules containing three atoms of oxygen with a molecular weight of 48.0 g/mole.

VV. "Part" means the required NMAC designation for the normal division of a chapter. A part consists of a unified body of rule material applying to a specific function or devoted to a specific subject matter. Structurally, a part is the equivalent of a rule.

WW. "Particulate matter" or "PM" means any airborne finely divided solid or liquid material such as dust, smoke, mist, fumes or smog found in air or emissions.

XX. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the reference method in 40 CFR 60, Appendix A, Method 5, or an equivalent method approved by the EPA.

YY. "Pathological waste destructor" means any equipment, which is used to dispose of pathological waste by combustion or other process, which is approved by EPA.

ZZ. "Performance test" means the data, which is the result of a test performed as required by the department to determine compliance.

AAA. "Permit" means any permit or group of permits, modifications, renewals or revisions authorizing the construction or operation of a stationary source pursuant to the federal act, the Air Quality Control Act, or laws and regulations in effect pursuant to the act.

BBB. "Permittee" means the owner or operator identified in any permit application or permit.

CCC. "Person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns.

DDD. "Photochemical oxidants" means an air pollutant, which is formed by the action of sunlight on oxides of nitrogen and hydrocarbons.

EEE. "PM₁₀", "PM_{2.5}" or "PM₁" means particulate matter with an aerodynamic diameter less than or equal to 10, 2.5, or 1 micrometers, respectively.

FFF. "PM_{2.5} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted into the ambient air as measured by the reference method in 40 CFR Part 50, Appendix L, approved by the EPA.

GGG. “**PM₁₀ emissions**” means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted into the ambient air as measured by the reference method in 40 CFR Part 50, Appendix J and M, or equivalent method approved by the EPA.

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

III. “**Portable stationary source**” or “**temporary stationary source**” means a stationary source capable of changing its location with limited dismantling or reassembly which is associated with a specific construction project or increased production demand.

JJJ. “**Potential to emit**” or “**pre-controlled emission rate**” means the maximum capacity of a stationary source to emit any air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable or is included in a permit issued by the department. However, the potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

KKK. “**Process equipment**” means any equipment used for storing, handling, transporting, processing or changing any materials whatsoever but excluding that equipment specifically defined in these regulations as incinerators, crematories, pathological waste destructors, pathological destructors and medical waste destructors.

LLL. “**Process weight**” means the total weight of all materials introduced into any specific process, which causes any discharge of air contaminants into the atmosphere. Solid fuels introduced into any specific process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

MMM. “**Process weight rate**” means the hourly rate derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, or from the beginning to the completion of a typical portion thereof, excluding any time during which the equipment is idle.

NNN. “**Regulated air pollutant**” means the following:

- (1) any pollutant for which a national, state, or local ambient air quality standard has been promulgated;
- (2) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;
- (3) any Class I or II substance subject to any standard promulgated under or established by Title VI of the federal act; or
- (4) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act.

OOO. “**Responsible official**” means one of the following:

- (1) **for a corporation:** a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for, or subject to a permit and either:
 - (a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - (b) the delegation of authority to such representatives is approved in advance by the department;
- (2) **for a partnership or sole proprietorship:** a general partner or the proprietor, respectively;
- (3) **for a municipality, state, federal or other public agency:** either a principal executive officer or ranking elected official; for the purposes of 20.11.1 NMAC, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or
- (4) **for an acid rain source:**
 - (a) the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned; and
 - (b) the designated representative for any other purposes under 40 CFR Part 70.

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

QQQ. [Reserved]

RRR. [Reserved]

SSS. "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, soot and combustible material.

TTT. "Solid waste" means garbage; refuse; yard waste; food wastes; plastics; leather; rubber; sludge; and other discarded combustible or noncombustible waste, including solid, liquid, semisolid; or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community or residential activities, and from waste treatment plants, water supply treatment plants, or air pollution control facilities; but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permit under Section 402 of the Federal Water Pollution Control Act, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act.

UUU. [Reserved]

VVV. "Stack, chimney, vent, or duct" means any conduit or duct emitting particulate or gaseous emissions into the open air.

WWW. "Standard conditions" means the conditions existing at a temperature of 70° F (25° C) and pressure of 14.7 psia (760 mmHg).

XXX. "Standard cubic foot" means a measure of the volume of one cubic foot of gas at standard conditions.

YYY. "Startup" means setting into operation any air pollution control equipment, or process equipment.

ZZZ. "Stationary source" means any building, structure, facility or installation, which is either permanent or temporary, excluding a private residence, that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act, the Air Quality Control Act, or the laws and regulations in effect pursuant to the act. Several buildings, structures, facilities, or installations, or any combinations will be treated as a single stationary source if they belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons, or are under common control. Pollutant-emitting activities shall be treated as the same industrial grouping if they have the same first two digits of an applicable standard industrial classification (SIC) code as described in the standard industrial classification manual, or if they have the same first three digits of an applicable north american industry classification system (NAICS) code.

AAAA. "Sulfur dioxide" or " SO_2 " means a pungent, colorless, poisonous gas composed of molecules containing a single atom of sulfur and two atoms of oxygen with a molecular weight of 64.07 g/mole.

BBBB. "Total reduced sulfur" means any combination of sulfur compounds, except sulfur dioxide and free sulfur, which test as reduced sulfur, including, but not limited to, hydrogen sulfide, methyl mercaptan, and ethyl mercaptan.

CCCC. "Total suspended particulate" or "TSP" means particulate matter as measured by the method described in 40 CFR Part 50, Appendix B.

DDDD. "Vapors" means the gaseous form of a substance, which exists in the liquid or solid state at standard conditions.

EEEE. "Visible emission" means an emission that can be seen because its opacity or optical density is above the threshold of vision.

FFFF. "Volatile organic compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(1) VOC includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HCFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-

1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane(HFC 43-10mee); difluoromethane(HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃ or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅ or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃ or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH₃); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; and perfluorocarbon compounds which fall into these classes:

- (a) cyclic, branched, or linear, completely fluorinated alkanes;
- (b) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (c) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations;

and

- (d) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(2) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in the approved state implementation plan (SIP) or 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibility-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the enforcement authority.

(3) As a precondition to excluding these compounds as VOC or at any time thereafter, the enforcement authority may require an owner or operator to provide monitoring or testing methods and results, demonstrating, to the satisfaction of the enforcement authority, the amount of negligibly-reactive compounds in the source's emissions.

(4) For purposes of federal enforcement for a specific source, the EPA shall use the test methods specified in the applicable EPA-approved SIP, in a permit issued pursuant to a program approved or promulgated under Title V of the act, or under 40 CFR Part 51, Subpart I or Appendix S, or under 40 CFR Parts 52 or 60. The EPA shall not be bound by any state determination as to appropriate methods for testing or monitoring negligibly-reactive compounds if such determination is not reflected in any of the above provisions.

(5) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

(6) For the purposes of determining compliance with California's aerosol coatings reactivity-based regulation, (as described in the California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 3), any organic compound in the volatile portion of an aerosol coating is counted towards that product's reactivity-based limit. Therefore, the compounds identified in Subsection FFFF of 20.11.1.7 NMAC as negligibly reactive and excluded from EPA's definition of VOCs are to be counted towards a product's reactivity limit for the purposes of determining compliance with California's aerosol coatings reactivity-based regulation.

(7) For the purposes of determining compliance with EPA's aerosol coatings reactivity based regulation (as described in 40 CFR Part 59 - National Volatile Organic Compound Emission Standards for Consumer and Commercial Products) any organic compound in the volatile portion of an aerosol coating is counted towards the product's reactivity-based limit, as provided in 40 CFR Part 59, Subpart E. Therefore, the compounds that are used in aerosol coating products and that are identified in Subsection FFFF of 20.11.1.7 NMAC as negligibly reactive and excluded from EPA's definition of VOC are to be counted towards a product's reactivity limit for the purposes of determining compliance with EPA's aerosol coatings reactivity-based national regulation, as provided in 40 CFR Part 59, Subpart E.

GGGG. "Measurements, abbreviations, and acronyms"

A-BC AQCB-Albuquerque - Bernalillo county air quality control board

ABT-averaging, banking and trading (program)

AIRS-aerometric information retrieval system

AMPA-Albuquerque metropolitan planning area

API-American petroleum institute
AQIA-air quality impact assessment
AQI-air quality index
AQS-air quality services
ASE-national institute for automotive service excellence
ASTM-American society for testing and materials
ATS-allowance tracking system
BACT-best available control technology
Bhp-brake horsepower
Btu-British thermal unit
C-Celsius
CAA(A)-federal Clean Air Act (Amendments)
CEM-continuous emission monitor
CFC(s)-chlorofluorocarbon(s)
cfh-cubic feet per hour
cfm-cubic feet per minute
CFR-code of federal regulations
CO₂-carbon dioxide.
CO-carbon monoxide.
COG-mid-region council of governments
CMAQ-congestion mitigation and air quality
cu. in.-cubic inch(es)
DER-discrete emission reduction
DOE-department of energy
DOT-U.S. department of transportation
DPM-development process manual
DRB-development review board
EA-environmental assessment
EHD-environmental health department
EI-emission inventory
EIS-environmental impact statement
EPA-U.S. environmental protection agency
EPC-environmental planning commission
ERC-emission reduction credit
F-Fahrenheit
FHWA-federal highway administration, DOT
FMVCP-federal motor vehicle control program
FR-federal register
ft.-feet
FTA-federal transit administration, DOT
g-gram(s)
g/mole-grams per mole
gal-U.S. gallon(s)
GVW-gross vehicle weight
GVWR-gross vehicle weight rating
h-hour(s)
HAP-hazardous air pollutants
HC-hydrocarbon(s)
Hg-mercury
hp-horsepower
I/M-inspection/maintenance
in.-inch(es)
ISTEA-Intermodal Surface-Transportation Efficiency Act (see SAFETEA-LU)
K-Kelvin
kg-kilogram(s)
km-kilometer(s)

kPa-kilopascal(s)
lb.-pound(s)
lb/day-pounds per day
lb-ft-pound-feet
lb/hr-pounds per hour
lb/yr-pounds per year
LAER-lowest achievable emission rate
LNG-liquefied natural gas
LPG-liquefied petroleum gas
LRTP-long range transportation plan
m-meter(s)
MACT-maximum achievable control technology
max.-maximum
MCO-manufacturer's certificate of origin
µg-microgram
µg/m³-microgram per cubic meter
mg-milligram(s)
mg/m³-milligram per cubic meter
mi.-mile(s)
min-minute(s)
ml-milliliter(s)
mm-millimeter(s)
MMBtu-million Btu
mmHg-millimeters of mercury
mph-miles per hour
MPO-metropolitan planning organization
MRCOG-mid-region council of governments
MSERC-mobile source emission reduction credits
MSMTC-mobile source modeling technical committee
MTBE-methyl tertiary butyl ether
MVD-motor vehicle division
MWe-megawatt electrical
N₂-nitrogen
NAAQS-national ambient air quality standards
NAMS-national air monitoring station
NCORE-national core multi-pollutant monitoring network
NDIR-NonDispersive InfraRed
NEPA-National Environmental Policy Act
NESCAUM/MARAMA-northeast states for coordinated air use management/mid-atlantic regional air management association
NESHAP-national emission standards for hazardous air pollutants
NIST-national institute of standards and technology
NM-New Mexico
NMAC-New Mexico administrative code
NMSA-New Mexico statutes annotated
NO-nitric oxide
NO₂-nitrogen dioxide
NO_x-oxides of nitrogen
No-number
NOV-notice of violation
NMHC-non-methane hydrocarbons
NSPS-new source performance standards
NSR-new source review
O₂-oxygen
O₃-ozone
OMTR-open market trading rule

OTAG-ozone transport assessment group
OTC-ozone transport commission
Pb-lead
PIC-public involvement committee
PM-particulate matter
PM_{2.5}-particulate matter less than 2.5 microns
PM₁₀-particulate matter less than 10 microns
ppm-parts per million by volume
ppm C-parts per million, carbon
PSD-prevention of significant deterioration
psi-pounds per square inch
psia-pounds per square inch absolute
psig-pounds per square inch gauge
PTE-potential to emit
PWD-pathological waste destructor
QF-qualifying facility
R-Rankin
RACT-reasonably available control technology
R&D-research & development
RECLAIM-regional clean air incentives market
ROG-reactive organic gases
rpm-revolutions per minute
RTA-regional transit authority
RTC-RECLAIM trading credit
RVP-reid vapor pressure
s-second(s)
SAE-society of automotive engineers
SAFETEA-LU-The Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users
SBAP-small business assistance program
scf-standard cubic foot
SI-international system of units
SIP-state implementation plan
SLAMS-state and local air monitoring station
SMOG-SMoke + fOG
SO₂-sulfur dioxide
State DOT-New Mexico department of transportation
STIP-state transportation improvement program
TCC-transportation coordinating committee
TCM-transportation control measure
TES-transportation evaluation study
TIP-transportation improvement program
TMA-transportation management association
ton/yr-tons per year
TPTG-transportation program task group
tpy-tons per year
TSP-total suspended particulate
UPWP-unified planning work program
UTPPB-urban transportation planning policy board
U.S.-United States
UV-ultraviolet
VE-visible emission(s)
VIN-vehicle identification number
VMT-vehicle miles traveled
VOC-volatile organic compounds
VPMD-vehicle pollution management division
%-percent

°-degree(s)

[3/21/77. . 11/12/81, 11/21/81, 3/16/89, 6/16/92, 2/26/93, 9/23/94, 12/16/94, 12/1/95, 8/1/96; 20.11.1.7 NMAC - Rn, 20 NMAC 11.01.I.7, 10/1/02; A, 7/1/04; A, 9/14/09; A, 1/10/11]

20.11.1.8 VARIANCES: [Reserved]
[12/1/95; 20.11.1.8 NMAC - Rn, 20 NMAC 11.01.I.8, 10/1/02]

20.11.1.9 SAVINGS CLAUSE: Any amendment to 20.11.1 NMAC which is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, or 20.11.1 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed.
[12/1/95; 20.11.1.9 NMAC - Rn, 20 NMAC 11.01.I.9, 10/1/02; A, 9/14/09]

20.11.1.10 SEVERABILITY: If any section, paragraph, sentence, clause or word of 20.11.1 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.1 NMAC.
[12/1/95; 20.11.1.10 NMAC - Rn, 20 NMAC 11.01.I.10, 10/1/02; A, 9/14/09]

20.11.1.11 DOCUMENTS: Documents incorporated and cited in 20.11.1 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.
[12/1/95; 20.11.1.11 NMAC - Rn, 20 NMAC 11.01.I.11 & A, 10/1/02; A, 9/14/09]

20.11.1.12 [Reserved]
[12/1/95; 20.11.1.12 NMAC - Rn, 20 NMAC 11.01.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.01.II.1, 10/1/02]

20.11.1.13 [Reserved]
[11/12/81. . 3/24/82, 8/1/96; 20.11.1.13 NMAC - Rn, 20 NMAC 11.01.II.2, 10/1/02; Repealed, 7/1/04]

20.11.1.14 [Reserved]
[3/24/82; 20.11.1.14 NMAC - Rn, 20 NMAC 11.01.II.3, 10/1/02; Repealed, 9/14/09]

HISTORY OF 20.11.1 NMAC:

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

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

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

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

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

Regulation No. 1, Resolutions - Air Pollution Control Regulations, 3/24/82;

Regulation No. 1, Resolution - Air Pollution Regulations, 6/18/86;

Resolution No. 2, Ambient Air Quality Standards of the Albuquerque - Bernalillo County Air Quality Control Board, 8/6/71;

Resolution No. 2, Ambient Air Quality Standards of the Albuquerque - Bernalillo County Air Quality Control Board, 6/6/73;

Standard No. 1, Ambient Air Quality Standards, 11/12/81;

Regulation No. 2, Definitions, 3/24/82;

Regulation No. 2, Definitions, 1/3/85;

Regulation No. 2, Definitions, 3/16/89;

Regulation No. 2, Definitions, 11/27/91;

Regulation No. 2, Definitions, 6/16/92;

Regulation No. 26, Interpretation, 3/24/82.

History of Repealed Material: [RESERVED]

Other History: Regulation No. 1, Air Pollution Regulations, filed 6/18/86; Standard No. 1, Ambient Air Quality Standards, filed 11/12/81; Regulation No. 2, Definitions, filed 6/16/92; and Regulation No. 26, Interpretation, filed 3/24/82; were all renumbered and reformatted into first version of the New Mexico Administrative Code as 20 NMAC 11.01, General Provisions, filed 10/27/95.
20 NMAC 11.01, General Provisions, filed 10/27-95 was renumbered, reformatted, amended and replaced by 20.11.1 NMAC, General Provisions, effective 10/1/02.

2421 Tapia Blvd SW
Albuquerque, New Mexico 87105

December 26, 2012

Director
City of Albuquerque Air Quality Division
1 Civic Plaza Room 3047
Albuquerque, New Mexico 87102

Dear Sir:

I hereby appeal the decision of your employee Mr. Charles Aragon to deny my 2012 "no burn exemption". Please note that I have received the exemption continuously since Albuquerque/Bernalillo Country first implemented the regulation in 1990.

The interior of my dwelling has been subjected to inspection by your department three times: In 1993, 2004, and 2006. As witness your inspectors' reports, nothing has changed with respect to two wood-burning stoves as heating sources during this 23-year time period. I have kept detailed records of these inspections and all previous decisions to grant me a "no burn exemption".

In fact, your employee Mr. Aragon has personally entered my dwelling twice. After the last entry he apologized for the repeated inspections, stated that there was no reason to require further inspections of my home, and would note that in the department's file on my dwelling. I have written proof of his statement.

Based on previous inspections spanning a period of 14 years (1993-2007) with no changes in wood-burning sources as heat for my home, I see no reason why Mr. Aragon would again choose to request entry to the inside of my dwelling and question what will be accomplished by re-entry.

I therefore request that my "no-burn exemption" be granted once again for 2012. My attorney is copied on this letter.

Sincerely yours,


Michael S. Fulp

Cc: Patrick Rogers

Request for Hr.

Education and Work Background of City Technical Witness
Charles A. Aragon

AFFILIATION AND TITLE.

Field Operations Officer, Enforcement Section, Air Quality Division,
Environmental Health Department, City of Albuquerque, New Mexico

EDUCATION

Associates Degree, Pima College, Tucson Arizona, August 1989
2-year completion of studies in Electronics Technology, August 1982

TRAINING

Certification of Visible Opacity Reading – 08/29/12
New Mexico Environmental Enforcement Training – 12/3/12
HAZWOPER – 04/16/12
Advanced Inspector Training – 10/27/2011
Basic Inspector Course Training – 8/15-18/2006

EXPERIENCE

I have one year experience as a Field Operations Officer, eight years experience as an Environmental Health Specialist II (Lead Inspector), and five years experience as an Environmental Health Specialist I, for a total of 14 years experience with the Air Quality Division.

City of Albuquerque – Environmental Health Department – Air Quality Division
Compliance & Enforcement Section

Title: Field Operations Officer 9/11 to Present

Environmental Health Specialist II 11/04 to 9/11

Environmental Health Specialist I 03/99 to 11/04

- Fourteen years experience in enforcing and investigating Federal, State, County, and City Ordinances, Code Enforcement, Code Compliance and Inspections.
- Technical Lead over two inspectors.
- Representative of Air Quality Division and present at Albuquerque/Bernalillo Air Quality Control Board meeting for Regulation 20.11.20 NMAC Fugitive Dust Control hearing for changes that took effect March 17, 2008.
- Conducted major and minor stationary source inspections as mandated under USEPA Federal Clean Air Act, State of New Mexico Air Quality Control Act, and Albuquerque/Bernalillo County Air Quality Control Regulations.
- Determined air emissions from various equipment and activities, including the No-Burn program, using my opacity certification.
- Reviewed over 700 No-Burn exemption requests and home inspections.

- I have been involved in approximately 6 no-burn events.
- Interpreted and evaluated compliance with Air Quality regulations and air quality permits by conducting inspections of Fugitive Dust Sites and Stationary Source Facilities.
- Special projects in the field of Municipal Environmental Health include two workshops I conduct a year to the public to educate them on the Air Quality Control Board Regulation 20.11.20 NMAC.
- Responsible for receiving, reviewing and analyzing applications for the Fugitive Dust Control Program.
- Responsible for review and approval of Demolition Permits.
- Approved permits governing the conditions under which permittees will control dust.
- Responsible for the tracking of billing and coordination with financial staff for Fugitive Dust Control Permits (Construction & Programmatic).
- Confirmed violations and recommended issuance of Notice of Violations to facility/individuals who were in violation of AQD Regulation, Federal Regulations, Fugitive Dust Permits, and/or ATC Permits.
- Coordinated enforcement cases with city legal staff including presence at settlement agreement meetings.
- Responded to and rectified indoor and outdoor air complaints through the City's 311 complaint tracking system.

ENVIRONMENTAL HEALTH DEPARTMENT
AIR QUALITY DIVISION
COMPLIANCE ASSURANCE SECTION

EXEMPTION REQUEST
FORM
20.11.22 NMAC, WOOD BURNING

1 CIVIC PLAZA
RM. 3047
P.O. BOX 1293
ALBUQUERQUE, NM 87103
(505) 768-1972 VOICE
(505) 768-1977 FAX
(505) 768-2482 TTY

APPLICANT NAME: Museozzi, Fulp

PHYSICAL ADDRESS OF THE WOOD BURNING APPLIANCE:

MAILING ADDRESS (IF DIFFERENT):

2421 Topia Blvd SW

DAYTIME TELEPHONE:

NIGHT TELEPHONE:

MESSAGE TELEPHONE:

EMAIL ADDRESS:

764-2292? @ 12-5-12 4:54 pm

REASON FOR EXEMPTION REQUEST: (INDICATE ONE)

WOOD BURNING AS YOUR ONLY SOURCE OF HEAT. ONLY RESIDENCES OR BUILDINGS THAT APPLIED FOR AND RECEIVED A SOLE SOURCE EXEMPTION PRIOR TO DECEMBER 31, 1990 MAY QUALIFY. THIS EXEMPTION MUST BE RENEWED ANNUALLY. A DEPARTMENT INSPECTION MAY BE REQUIRED TO VERIFY ALL CLAIMS. EXEMPTIONS FOR ROOM ADDITIONS BUILT WITHOUT A PERMANENT HEATING SYSTEM WILL NOT BE APPROVED.

TEMPORARY EXEMPTION TO REPAIR OR REPLACE A HEATING SYSTEM. A LIMITED TERM EXEMPTION CAN BE GRANTED TO PERSONS FOR INSTALLING OR REPAIRING A PERMANENT HEATING SYSTEM. ALL CLAIMS ARE SUBJECT TO VERIFICATION.

EXEMPTION FOR MEDICAL REASONS. APPLICANTS APPLYING FOR A MEDICAL EXEMPTION MUST ATTACH A LETTER FROM YOUR HEALTH CARE PROVIDER PRESCRIBING WOOD HEAT FOR A GONA FIDE MEDICAL CONDITION. YOUR HEALTH CARE PROVIDER MUST STATE WHAT HEATING ALTERNATIVES, OTHER THAN WOOD BURNING, WERE CONSIDERED AND THE REASON NOT SELECTED. ECONOMIC NEED WILL NOT BE A CONSIDERED SINCE THE APPLICANT HAS THE OPPORTUNITY TO APPLY FOR AN EXEMPTION BASED ON ECONOMIC NEED.

LOW INCOME EXEMPTION. IF YOU QUALIFY FOR FOOD STAMPS, LOW INCOME HOME ENERGY ASSISTANCE, OR MEDICAID, YOU MAY BE ELIGIBLE FOR AN EXEMPTION. AT THE TIME OF APPLICATION, THE APPLICANT MUST PROVIDE THE DEPARTMENT WITH A COPY OF A RECENT BENEFITS AWARDS LETTER (COPIES OF EBT CARDS WILL NOT BE ACCEPTED), OR A LETTER FROM THE NEW MEXICO STATE HUMAN SERVICES DEPARTMENT STATING ELIGIBILITY. IF APPROVED, THE EXEMPTION WILL BE FOR THE PHYSICAL ADDRESS LISTED ON THE BENEFITS LETTER. IF YOUR MAILING ADDRESS IS DIFFERENT THAN YOUR PHYSICAL ADDRESS WHERE THE WOOD BURNING APPLIANCE IS LOCATED, THE APPLICANT MUST PROVIDE ADEQUATE PROOF, SUCH AS A COPY OF A DRIVER'S LICENSE, UTILITY BILL, ETC., THAT DOCUMENTS THE APPLICANT LIVES AT THE PHYSICAL ADDRESS INDICATED ON THE APPLICATION.

Handwritten notes:
Trial run # on
No lock - Found # on
Wood burning data base

Handwritten notes:
12-7-12 2:15pm arrived
to do inspection gate locked, no
trespassing signs, unable to make
contact. Left card with inspecting
CHECK ALL THAT APPLY: to call me for inspection

RESIDENCE BUSINESS RENT OWN

CERTIFICATION:

I AM REQUESTING AN EXEMPTION FROM AIR QUALITY CONTROL BOARD REGULATION 20.11.22 NMAC, WOOD BURNING, TO USE MY WOOD BURNING APPLIANCE DURING DECLARED "NO BURN" PERIODS IN THE WOOD SMOKE IMPACT AREA WITHIN BERNALILLO COUNTY. I CERTIFY THAT I QUALIFY FOR THE EXEMPTION REQUESTED ABOVE AND THE INFORMATION ON THIS APPLICATION IS TRUE AND CORRECT. I FURTHER UNDERSTAND AND AGREE TO ALLOW THE ALBUQUERQUE ENVIRONMENTAL HEALTH DEPARTMENT TO VERIFY ALL APPLICABLE CLAIMS MADE ON THIS APPLICATION.

SIGNATURE: M. Museozzi

DATE: 9-6-12

DEPARTMENT USE ONLY:

APPROVED DENIED:

BY: [Signature]

DATE: 12-7-12

ENTERED: 12/10/12

WOOD BURNING EXEMPTION FORM (REVISED 09/10)

Handwritten signature: Juan H

City Ex. 2

SK0000 174

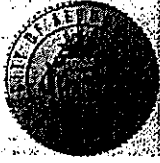
→ See book

12-7-12 2:50pm Michael Fulp called me back
as I requested on my card left at his home.

Michael

DECEMBER 7, 2012 2:50PM

MICHAEL FULP CALLED ME BACK AS I REQUESTED ON MY CARD THAT I LEFT AT HIS HOME ON THE FENCE. MICHAEL WAS VERY ANGRY AND SAID HE IS A VERY PRIVATE PERSON AND DOES NOT WANT ANYONE AT HIS HOME, AND SAID HE IS GOING TO BURN AND WE CAN GO AFTER HIM IF WE WANT TO. MICHAEL ALSO SAID HE WAS IN THE COUNTY AND SAID I'VE ALREADY INSPECTED HIS HOME TWICE AND WHY DO I NEED TO GO AGAIN. I LET HIM KNOW THAT OUR REGULATION MANDATES THAT WE INSPECT EVERY YEAR, BUT THAT MADE HIM MORE ANGRY, AND HE SAID HE HADN'T BEEN INSPECTED IN SEVEN YEARS. I TRIED TALKING TO HIM BUT HE KEPT ON TALKING AND WOULDN'T LET ME EXPLAIN. I TURNED MY SPEAKER ON MY PHONE ON SO INSPECTOR CHRIS LUNA COULD HEAR. MICHAEL THEN KEPT RAISING HIS VOICE AND WAS VERY ANGRY, I TOLD HIM I WAS GOING TO HANG UP, BUT HE KEPT YELLING AT ME AND WOULDN'T LET ME TALK SO I HUNG UP.



City of Albuquerque
Environmental Health Department
Air Quality Division

1 Civic Plaza NW, Room 3047
Albuquerque, NM 87102



Wood Burning Exemption Request Denial

December 12, 2012

MICHAEL FULP
2421 TAPIA BLVD SW
Albuquerque, NM 87105

copy

letter mailed 12-12-12
12:20 pm

RE: Exemption Req# SR0000174

EXEMPTION PERIOD: October 2012- February, 2013

The Director, or designee, of the Environmental Health Department, has denied your request for a "no burn" exemption. This denial will not prevent you from using your wood burning stove or fireplace on days that it is okay to burn. Call 768-BURN, or 768-4732 (mensaje en Espanol), before you burn.

The denial is based on your decision to deny an inspection of your home by the Department. If you wish to discuss this matter further please call Charles Aragon at (505) 768-1951 (voice) or 768-2428 (TTY) during regular business hours. You may also reach Mr. Aragon via email: caaragon@cabq.gov.

As allowed by Regulation 20.11.22 NMAC, Wood Burning, you have the right to appeal this decision to the Albuquerque/Bernalillo County Air Quality Control Board. If you wish to appeal this decision, you must write the Director at the address above within 15 days of receiving this letter. Your appeal will be heard at the next regularly scheduled meeting of the Board in which a quorum is present. The decision of the Board is final. The decision of the Board is a final administrative decision and may be appealed as allowed by the New Mexico Air Quality Control Act.

If you do not respond to this letter within 15 days after receipt, your exemption request will be considered denied by default and you will lose your right to appeal the decision of the Director. This, in no way, prevents you from applying for an exemption again this season or next if conditions change.

Please contact Mr. Aragon at (505) 768-1951 (voice) or 768-2428 (TTY) if you have any questions or concerns about this letter.

Thank you.

Aragon, Charles A.

From: Gonzales, Amy R.
Sent: Thursday, January 03, 2013 9:46 AM
To: Reyes, Damon R.; Aragon, Charles A.
Cc: Westmoreland, Bill; Leonard, Mary Lou ; Nevarez, Danny S.
Subject: Wood Burning Exemption Denial Compliant
Attachments: Wood Burning Exemption Denial Compliant.pdf

Damon/Charles,

A complaint was sent to MLL post-marked 12/27/12 from Michael S. Fulp regarding a Wood Burning Exemption Request Denial.
Attached is the PDF for your review and handling. Please copy all on response for recording purposes.

Thank you,

Amy R. Gonzales
Administrative Assistant
Environmental Health Department
P: (505) 768-2613
F: (505) 768-2617
argonzales@cabq.gov

Michael Fulp

764-2292

left message

1-7-13 2:45 pm

Debra Malone

PHDX System

2nd Wednesday

5:30

CITY OF ALBUQUERQUE



January 11, 2013

copy

Michael Fulp
2421 Tapia Blvd. SW
Albuquerque, New Mexico 87105

Certified No. 7004 1350 0004 2444 8918

Re: No-Burn Exemption Request

Dear Mr. Fulp:

On January 3, 2013, the Air Quality Division (Division) received your letter, dated December 26, 2012, appealing the Division's denial of your wood burning exemption request.

Regulation 20.11.22.2.C NMAC, Exemption Conditions, states: "In no event shall an exemption be issued for more than 150 days. All exemptions shall be effective for only one no-burn season, unless a different period is specified in the exemption...". Therefore, your winter 2011/2012 exemption has expired. If you would like to have the Division inspect your premises and determine whether a current exemption can be issued, instead of continuing with your appeal, please contact me.

PO Box 1293

Albuquerque

NM 87103

Otherwise, pursuant to 20.11.22.2.E NMAC, your appeal will be heard by the Albuquerque-Bernalillo County Air Quality Control Board (AQCB) on February 13, 2013. Prior to the AQCB meeting, a packet of materials containing the AQCB agenda and associated documents will be mailed. Also, as required by 20.11.2.22 NMAC, "Every person who requests a hearing before the board shall pay a filing fee of \$125.00, which shall be delivered to the board hearing clerk with the petition or other document that requests a hearing before the board...".

www.cabq.gov

Please confirm whether you will be represented by an attorney so we will know who will be receiving communication from the City.

If you have any questions regarding this letter, you may contact me at caaragon@cabq.gov or 505-768-1951.

Sincerely

Charles Aragon
Field Operations Officer
Air Quality Division
Environmental Health Department

Xc: Mary Lou Leonard, Director, Environmental Health Department
Bill Westmoreland P.E., Deputy Director, Environmental Health Department
Margaret Nieto, Supervisor, Control Strategies, Environmental Health Department
File

1/11/13
ENTERED

AI

City Ex. 7

006

Monthly meeting of the Air Quality Control Board.

When

Feb 13, 2013

05:30 PM - 09:00 PM

Where

Vincent E. Griego Chambers

1 Civic Plaza NW

Albuquerque, NM 87102

Description

AQCB Petition No. 2013-2

AQCB Draft Agenda, February 13, 2012

AQCB Draft Minutes, January 9, 2013

AQCB Petition No. 2013-1

Contact

Elizabeth Jones

ejones@cabq.gov

505-768-2601

[Add to Calendar](#) [Share This Event](#)

Air Bd Web Page

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE HEARING ON
THE MERITS REGARDING THE DENIAL OF
A WOOD BURNING EXEMPTION**

Michael Fulp, Petitioner

AQCB Petition No. 2013-2

Air Quality Control Board Resolution # 2013-__

**Sustaining the City of Albuquerque's December 12, 2012 Denial of Petitioner
Michael Fulp's Wood Burning Exemption Request for the Period October 2012
through February 2013 regarding 2421 Tapia Blvd. SW, in Albuquerque, Bernalillo
County, New Mexico**

Whereas, the New Mexico Air Quality Control Act (Air Act), NMSA 1978, Section 74-2-1, et seq.; the Bernalillo County *Joint Air Quality Control Board Ordinance*, Bernalillo County Ordinance § 30-34, *Duties and powers of the department*; Bernalillo County Ordinance § 30-31, *Definitions*; the City of Albuquerque (City) *Joint Air Quality Control Board Ordinance*, Section 9-5-1-5 (ROA [Revised Ordinances of Albuquerque] 1994; and Section 20.11.22 NMAC, *Wood Burning*; are the primary laws applicable to the Hearing on the Merits regarding the City of Albuquerque's (City's) December 12, 2012 denial of Petitioner Michael Fulp's Wood Burning Exemption Request regarding the period October 2012 through February 201; and

Whereas, 20.11.22.2.B(1) NMAC establishes that, for a good cause, the Director of the City Environmental Health Department (Department) may provide a sole source exemption for a solid fuel heating device for the building in which the device is situated; and

Whereas, 20.11.22.13 NMAC establishes the annual no-burn period is from October 12 through February 28, so any sole source exemption granted by EHD for the October 2011 through February 2012 no-burn period has expired; and

City-proposed

Whereas, 20.11.22.2.C NMAC establishes that in no event shall an exemption be issued for more than 150 days, and that all exemptions shall be effective for only one no-burn season unless a different period is specified in the exemption; and

Whereas, the Petitioner submitted an *Exemption Request Form – 20.11.22 NMAC, Wood Burning*, dated September 6, 2012 to the Department requesting a sole source exemption regarding 2412 Tapia Blvd, SW, and in the Request the Petitioner agreed to allow the Department to verify Petitioner’s sole source claims made in the Request; and

Whereas, Petitioner has failed and refused to allow the Department access to 2421 Tapia Blvd, SW to verify the sole source claims made in Petitioner’s Exemption Request; and

Whereas, on December 12, 2012, the Department issued a *Wood Burning Exemption Request Denial* to the Petitioner; and

Whereas, the Petitioner filed a timely request for a hearing before the Albuquerque-Bernalillo County Air Quality Control Board (Board); and

Whereas, on February 13, 2013, the Board conducted the hearing on the merits regarding the City’s December 12, 2012 denial of Petitioner’s wood burning exemption request regarding the period October 2012 through February 2013; and

Whereas, the Air Board has reviewed the record and considered all testimony, exhibits and applicable provisions of 20.11.22; and

Whereas, the Air Board met on February 13, 2013 to deliberate and decide whether to sustain, modify or reverse the City’s December 12, 2012 Denial of Petitioner’s Wood Burning Exemption Request and to provide reasons for the Board’s decision;

Now, therefore, it is resolved by the Board that:

1. **The Board sustains the City of Albuquerque’s December 12, 2012 Denial of Petitioner Michael Fulp’s Wood Burning Exemption Request for the Period October 2012 through February 2013 regarding 2421 Tapia Blvd. SW, in Albuquerque, Bernalillo County, New Mexico; and**

2. **The Board directs _____ to prepare a proposed Final Order consistent with this Resolution and 20.11.22 NMAC.**

**PASSED AND ADOPTED THIS 13th DAY OF February, 2013
BY A VOTE OF ___ FOR AND ___ AGAINST.
ABSTAINED: __, ABSENT: __.**

**Dona Upson, MD, Chair
Albuquerque-Bernalillo County
Air Quality Control Board**

Attest:

Margaret Nieto, Secretary to the Board

36386

BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE HEARING ON
THE MERITS REGARDING THE DENIAL OF
A WOOD BURNING EXEMPTION

Michael Fulp, Petitioner

AQCB Petition No. 2013-2

FINAL ORDER

**Sustaining the City of Albuquerque's December 12, 2012 Denial of
Petitioner's Wood Burning Exemption Request for the Period
October 2012 through February 2013**

This matter comes before the Albuquerque-Bernalillo County Air Quality Control Board (Board) following a hearing on the merits held by the Board on February 13, 2013, in Albuquerque, New Mexico.

The City of Albuquerque (City) seeks approval of the *Wood Burning Exemption Request Denial* issued December 12, 2012 by the City to Petitioner Michael Fulp for the no-burn period October 2012 through February 2013.

Having considered 20.11.22 NMAC and the record in this matter, including all documents and testimony submitted at the February 13, 2013 Board hearing, and being otherwise fully advised regarding this matter;

IT IS THEREFORE ORDERED:

The *Wood Burning Exemption Request Denial* regarding the exemption period October 2012-February 2013 that was issued December 12, 2012 by the City to Petitioner

City-proposed

Fulp regarding 2421 Tapia Blvd, SW, in Albuquerque, Bernalillo County, New Mexico,
is sustained.

Dona Upson, M.D., Chair
Albuquerque-Bernalillo County
Air Quality Control Board

NOTICE OF RIGHT TO REVIEW

Pursuant to Section 74-2-9, NMSA 1978, any person adversely affected by an administrative action of the Board may appeal to the New Mexico Court of Appeals. All appeals shall be upon the record made at the hearing and shall be taken to the Court of Appeals within 30 days following the date notice is given of this action.