TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 102 OXYGENATED FUELS

20.11.102.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[11/1/89. . .12/1/95; 20.11.102.1 NMAC - Rn, 20 NMAC 11.102.I.1, 10/1/02; A, 9/1/04]

20.11.102.2 SCOPE: This Part is applicable to gasoline for use in motor vehicles in Bernalillo County.
[12/1/95; 20.11.102.2 NMAC – Rn, 20 NMAC 11.102.I.2, 10/1/02]

20.11.102.3 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 Sections 3 and 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4.
[11/1/89. . .12/1/95; 20.11.102.3 NMAC - Rn, 20 NMAC 11.102.I.3, 10/1/02; A, 9/1/04]

20.11.102.4 DURATION: Permanent.
[12/1/95; 20.11.102.4 NMAC – Rn, 20 NMAC 11.102.I.4, 10/1/02]

20.11.102.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.
[12/1/95; 20.11.102.5 NMAC – Rn, 20 NMAC 11.102.I.5 & A, 10/1/02]

20.11.102.6 OBJECTIVE: To provide for the use of oxygenated fuels in Bernalillo county to reduce tail pipe emissions from gasoline powered motor vehicles and to establish a contingency measure in the event that monitored carbon monoxide levels in Bernalillo county exceed 85 percent of the federal ambient carbon monoxide standards.
[6/15/95. . .12/1/95; 20.11.102.6 NMAC - Rn, 20 NMAC 11.102.I.6, 10/1/02; A, 9/1/04]

20.11.102.7 DEFINITIONS: In addition to the definitions in 20.11.102.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this part shall govern.

A. "Department" means the Albuquerque environmental health department or its successor agency.

B. "Ethanol" means a colorless volatile flammable alcohol with the molecular composition of C_2H_6O.

C. "Facility or facilities" means a place or places of business which sells or supplies for wholesale or retail purposes gasoline motor fuel, including fuel-transporting businesses.

D. "Gasoline motor fuels" means for purposes of this part, any flammable liquid used primarily as fuel for the propulsion of motor vehicles, but does not include diesel engine fuel, kerosene, liquefied petroleum gas, natural gas and products specially prepared and sold for use in the turbo-prop or jet-type engines.

E. "Manager" means the manager of the vehicle pollution management division (VPMD).

F. "MTBE" means methyl tertiary butyl ether.

G. "Methanol" means a light volatile flammable poisonous liquid alcohol CH_3OH formed by the destructive distillation of wood or manufactured from natural gas or coal, and used in combination with heavier co-solvent alcohols as an octane enhancer for addition to gasoline.

H. "Motor vehicle" means any vehicle propelled by a spark ignited internal combustion engine which is designed primarily for travel on public highways and which is generally and commonly used to transport persons and property over the public highways.

I. "Oxygen content by weight" means a measurement of the percentage of oxygen in an oxygenated fuel.

J. "Oxygenate" means any oxygen-containing ashless, organic compound which may be used as a fuel or as a gasoline blending component and which was approved as a blending agent under the provisions of a waiver issued by the U.S. environmental protection agency pursuant to the Clean Air Act, Section 211 (f) (4).

K. "Oxygenated fuel" means a motor vehicle fuel blend, whether leaded or unleaded, consisting primarily of gasoline and a substantial amount of one or more oxygenates, generally an alcohol or ether.

L. "Oxygenated fuels procedures manual or procedures manual" means a compilation of procedures developed by the manager pursuant to 20.11.102.13 NMAC.

[11/10/93; 20.11.102.7 NMAC - Rn, 20 NMAC 11.102.I.7, 10/1/02; A, 9/1/04]

20.11.102.8 VARIANCES: [Reserved]
[12/1/95; 20.11.102.8 NMAC - Rn, 20 NMAC 11.102.8, 10/1/02]

20.11.102.9 SAVINGS CLAUSE: Any amendment of 20.11.102 NMAC that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, Air Quality Control Board Regulation 35, 20.11.102 NMAC, or the procedures manual. Prosecution for a prior violation shall be governed and prosecuted under the statute, ordinance, regulation, part, or procedures manual in effect at the time the violation was committed.
[11/10/93. . .12/1/95; 20.11.102.9 NMAC - Rn, 20 NMAC 11.102.I.9, 10/1/02; A, 9/1/04]

20.11.102.10 SEVERABILITY: If any section, paragraph, 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 the remaining provisions of this Part or the Procedures Manual.
[11/10/93. . .12/1/95; 20.11.102.10 NMAC – Rn, 20 NMAC 11.102.I.10, 10/1/02]

20.11.102.11 DOCUMENTS: Documents incorporated and cited in this part may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102.
[12/1/95; 20.11.102.11 NMAC - Rn, 20 NMAC 11.102.I.11 & A, 10/1/02; A, 9/1/04]

20.11.102.12 OXYGENATED FUELS: Oxygenated fuels shall be used in all gasoline powered motor vehicles as a wintertime air pollution control strategy for reduction of carbon monoxide emissions in Bernalillo county.

A. Annual program duration and minimum oxygen content:

(1) Beginning November 1 and ending the last day of February of 1991 and every year thereafter no person shall supply or sell any gasoline motor fuel intended as a final product for fueling of motor vehicles within Bernalillo county, or sell at retail, or sell to a private or government fleet for consumption; or introduce such fuels into a motor vehicle in Bernalillo county unless the fuel contains a minimum 2.7 percent oxygen content by weight, except as required pursuant to 20.11.102.14 NMAC.

(2) The department shall establish the blending tolerance for oxygenated fuels.

(3) The board, after considering EPA guidelines, all available information, reports, data, and testimony, shall make a determination by July of each year whether the oxygenate levels should be modified or remain the same.

(4) Oxygenates approved for use in this program shall be blended per unit volume of gasoline motor fuel, and blended up to a 10 percent by volume for ethanol, and up to 15 percent by volume MTBE or at the volume for any other gasoline motor fuel additive which has been issued a waiver by the EPA pursuant to the Clean Air Act, Section 211 (f) (4).

(5) No gasoline motor fuel blended with methanol and intended as a final product for fueling of motor vehicles shall be sold at retail or to a private or government fleet within Bernalillo county.

B. Labeling and notice to the public:

(1) All oxygenated motor fuel sold shall be labeled at each dispensing pump identifying the type of oxygenate, in accordance with labeling criteria developed by the department. Each gasoline pump stand at retail dispensing facilities must have a label stating, "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

(2) All retail gasoline vending facilities shall keep readily available all pamphlets, brochures, fact sheets, and other written information provided to them by the department for information and dissemination to the public.

(3) The department shall develop a public education plan to inform the public of the commencement of the program, encourage compliance, and answer questions during the duration of the program. The board may review the plan and provide guidance and advice to the department on its implementation.

C. Enforcement:

(1) To determine compliance with this regulation, the department shall develop sampling frequency and testing criteria for gasoline motor fuel. The department, upon presentation of proper identification shall be allowed to enter a facility during reasonable times. The department may collect those samples deemed appropriate after paying for or offering to pay for these samples at any facility.

(2) The department may enter into any agreement as appropriate with any agency of the state, or other local government entities, to assist in the monitoring, compliance, and enforcement of 20.11.102 NMAC and the procedures manual.

(3) Any person selling or supplying, or offering to sell or supply gasoline motor fuels not meeting the provisions of 20.11.102 NMAC shall be subject to penalties and other civil, criminal, and equitable actions authorized by the Air Quality Control Act, NMSA 1978, 74-2-1 et seq.

D. Suspension of program due to oxygenate shortage: Should extreme and unusual circumstances occur in the marketplace preventing the blending of oxygenates at the levels designated by this part, the manager may take the necessary steps as a temporary emergency measure to relax or suspend this part. The manager shall inform the members of the board of such action taken within seven days of this occurrence. At its next regular meeting, or at a special meeting if so called, the board shall review the manager's action.

E. Program review: By the regular meeting of the board in July of each program year, the department shall provide a report to the board reviewing the results of the program, which shall include an analysis of costs and benefits to the consumer, investigations of complaints, compliance and quality assurance activities, and other findings and recommendations.

[11/10/93, 12/1/95; 20.11.102.12 NMAC - Rn, 20 NMAC 11.102.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.102.II.1, 10/1/02; A, 9/1/04]

20.11.102.13 OXYGENATED FUELS PROCEDURES MANUAL:

A. The manager shall develop an official document entitled *oxygenated fuels procedures manual* outlining in sufficient detail the procedures necessary for complying with this part. Upon approval by the board, the vehicle pollution management division manager shall publish the official *oxygenated fuels procedures manual* and within 10 days of publication provide general notice of its availability.

B. The procedures, details, and specifications contained in the *oxygenated fuels procedures manual* are a part of and are incorporated into this part and are binding upon each person governed by this part.

C. The procedures manual shall be reviewed and amended as required, and kept updated by the manager. Notice of manual amendments, shall be provided by the manager with copies made available to the users. It is the responsibility of the user to obtain and incorporate amendments as made available by the manager.

[11/10/93; 20.11.102.13 NMAC - Rn, 20 NMAC 11.102.II.2, 10/1/02; A, 9/1/04]

20.11.102.14 CONTINGENCY MEASURES:

A. Beginning July 1, 1995, until the later of June 13, 2006, or when the SIP revision, "*second half of the carbon monoxide maintenance plan for Bernalillo county*" is effective following EPA approval, if Bernalillo county violates the national ambient air quality standard for carbon monoxide, the following additional carbon monoxide control measures will take effect:

(1) the minimum oxygen content by weight of 2.7 percent required in Paragraph (1), of Subsection A of 20.11.102.12 NMAC, will be increased to 3.0 percent for ethanol beginning November 1 of the immediately following winter pollution season and continuing through the last day of the immediately following February and resuming every winter pollution season (November through February) thereafter; and

(2) in addition to the blending requirements referenced in Paragraph (4), of Subsection A of 20.11.102.12 NMAC, oxygenated fuel shall be blended prior to removal by tank truck from primary supply points (refineries and terminals).

B. Beginning on the later of June 13, 2006, or when the SIP revision, "*second half of the carbon monoxide maintenance plan for Bernalillo county*" is effective following EPA approval, if monitored carbon monoxide levels in Bernalillo county exceed 85 percent of the federal ambient carbon monoxide standards, then the minimum oxygen content by weight of 2.7 percent required in Paragraph (1), of Subsection A of 20.11.102.12 NMAC, will be increased to 3.0 percent for ethanol beginning November 1 of the immediately following winter pollution season and continuing through the last day of the immediately following February and resuming every winter pollution season (November through February) thereafter.

[11/10/93. . .6/15/95; 20.11.102.14 NMAC - Rn, 20 NMAC 11.102.II.3, 10/1/02; A, 9/1/04]

HISTORY OF 20.11.102 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. 35, Alternative Fuels, 11/1/89;

Regulation No. 35, Alternative Fuels, 6/25/92;

Regulation No. 35, Alternative Fuels, 11/10/93;
Regulation No. 35, Alternative Fuels, 6/15/95.

History of Repealed Material: [Reserved]

Other History: Regulation No. 35, Alternative Fuels, filed 6/15/95 was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.102, Oxygenated Fuels, filed 10/27/95.
20 NMAC 11.102, Oxygenated Fuels, filed 10/27/95 was **renumbered, reformatted, amended and replaced** by 20.11.102 NMAC, Oxygenated Fuels, effective 10/1/02.