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TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 41 [~~STATIONARY SOURCE~~] CONSTRUCTION PERMITS

20.11.41.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.
[20.11.41.1 NMAC – Rp, 20.11.41.1 NMAC, ~~1/15/09~~ ##/##/##]

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

A. Applicability: [~~Every stationary source subject to 20.11.41 NMAC shall obtain an air quality stationary source permit, permit modification, relocation approval or technical revision approval of a technical revision from the department as required by 20.11.41 NMAC before commencing construction of a new stationary source or commencing a modification, relocation, or technical revision if the proposed construction, modification, relocation or technical revision will emit a regulated air contaminant that is subject to any of the emission thresholds, source types, classifications or other requirements of Subsection A of 20.11.41.2 NMAC, except as otherwise provided in 20.11.41 NMAC.~~] Every stationary source subject to 20.11.41 NMAC shall obtain an air quality construction permit from the department as required by 20.11.41 NMAC before:

(1) commencing construction of a new stationary source;

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

(3) modification of a stationary source.

[~~(1)~~] B. Emission thresholds that require a [~~stationary source permit for~~] construction permit before commencing construction, [~~or~~] modification or operation of a stationary source subject to 20.11.41 NMAC:

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

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

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

[~~(d)~~] (4) If a stationary source was not required to obtain a construction permit pursuant to 20.11.41 NMAC because the source was operating before August 31, 1972, and if operations of the source have ceased for five or more consecutive years, and if [~~a~~] an air contaminant proposed to be emitted by the source [~~has a potential emission rate of 10 pounds per hour or more or 25 tons per year or more of any regulated air contaminant~~] triggers the emission thresholds in Paragraphs (1) or (3) of Subsection B of 20.11.41.2 NMAC, then the owner or operator of the source shall apply for and obtain a construction permit as required by 20.11.41 NMAC before the [~~source begins operation~~] person constructs, modifies or operates the source.

[~~**(e)** If a major stationary source or major modification as defined in 20.11.60 NMAC, *Permitting in Nonattainment Areas*, also meets the applicability requirements of 20.11.41 NMAC, then the major stationary source or modification shall apply for a permit pursuant to both 20.11.41 NMAC and 20.11.60 NMAC if either of the following conditions applies:~~

~~(i) the source is or will be located within a nonattainment area for any NAAQS and will emit the air contaminant or contaminants for which the area is in nonattainment, or will emit hydrocarbons in the case of ozone nonattainment; or~~

~~(ii) the source is or will be located in an area that is in attainment of the NAAQS for the air contaminant or air contaminants that the source will emit, but, before emissions offsets or trades are considered, the ambient impact of the emissions from the source will exceed the significance levels in the table incorporated in 20.11.60.22 NMAC at any location within the impacted areas that is in nonattainment for the air contaminant or air contaminants emitted by the source.~~]

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

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

[~~(2)~~] C. **Source classifications; source types:** If a person proposes to construct a new stationary source, modify an existing stationary source, construct a portable or temporary stationary source, or proposes a technical permit revision and any of the following conditions apply, the person shall apply for and obtain a construction permit, a construction permit modification or technical permit revision approval pursuant to 20.11.41 NMAC before commencing construction or modification of:

[~~(a)~~] (1) [~~if a person proposes to install~~] any equipment or process that is subject or becomes subject to 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*, or 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*;

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

[~~(b)~~] (3) [~~if a~~] any stationary source that meets the applicability requirements of 20.11.41 NMAC; ~~but also is~~ however, if the source is also a major stationary source or a major modification as defined in 20.11.61 NMAC, *Prevention of Significant Deterioration*, [~~in which case the owner or operator shall apply for a permit pursuant to both~~] then the source shall in addition be subject to [~~20.11.41 NMAC and~~] 20.11.61 NMAC; and

[~~(c)~~] (4) [~~if a source is~~] a major source of HAP as defined in 40 CFR Part 63.

[~~(3)~~] D. **Sources that become subject to new NSPS or NESHAP**. If a person is operating a source that becomes subject to a new NSPS or NESHAP, the person shall apply for and obtain a construction permit as required by 20.11.41 NMAC.

[~~(4)~~] E. **Additional Permit Requirements:**

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

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

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

[~~B.~~] F. **Exemptions:**

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

(2) The following sources and activities shall not be reported in the permit application. Emissions from such activities shall not be included in the calculation of the facility-wide potential emission rate under

[~~Subparagraphs (a), (b), or (c) of~~] Paragraphs (1)-(5) of Subsection [~~A~~] B and Subsection C of 20.11.41.2 NMAC. The following activities may be commenced or changed without a permit or permit modification under 20.11.41 NMAC if the emissions and activities are not subject to any requirement under a local board regulation, the New Mexico Air Quality Control Act, NMSA 1978, NSPS or NESHAP:

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

(b) activities for maintenance of equipment or pollution control equipment, either inside or outside of a building, including cutting, welding, painting and grinding[~~, but excluding painting~~];

(c) exhaust emissions from forklifts, courier vehicles, front end loaders, graders, carts, and maintenance trucks[~~, and fugitive emissions from fleet vehicle refueling operations, provided such emissions are not subject to any requirements under the New Mexico Air Quality Control Act, NMSA 1978, NSPS, or NESHAP~~];

(d) use of fire fighting equipment and fire fighting training provided [~~such~~] the emissions are not subject to any requirements [~~under~~] of a NSPS or NESHAP;

(e) government military activities such as field exercises, explosions, weapons testing and demolition to the extent that such activities[~~:~~

~~(i)~~]do not result in visible emissions entering publicly accessible areas; [~~and~~

~~(ii) are not subject to a NSPS or NESHAP;~~]

(f) use of portable aerospace ground equipment (such as power generators, compressors, heaters, air conditions, lighting units) if the equipment is used in direct support of aircraft operations, and on or in the immediate vicinity of an airfield[~~, provided such emissions are not subject to any requirements under NSPS or NESHAP~~];

(g) use of portable ~~construction~~ support equipment such as power generation equipment, compressors, heaters, air conditioning and lighting equipment used for activities that include, but are not limited to maintenance and repair if the equipment is used ~~in direct support of the construction~~ fewer than 12 consecutive months at the same location and the equipment does not directly support an otherwise regulated portable stationary source (such as a screening plant, sand and gravel processing equipment, hot asphalt plant, ~~or~~ concrete plant or soil vapor extraction system); and

[~~(g)~~] **(h)** gases used to calibrate plant instrumentation, including continuous emission monitoring (CEM) systems.

(3) An applicant for a permit is not required to obtain a permit for the following new or modified sources and activities at a facility, but is required to report the following on permit application forms [~~supplied by~~] available from the department: fuel burning equipment that is used solely for heating buildings for personal comfort or for producing hot water for personal use and that:

(a) uses gaseous fuel and has a design rate of five million BTU per hour or less; or

(b) uses distillate oil, but not including waste oil, and has a design rate of one million BTU per hour or less ~~and;~~.

(4) After a permit has been issued, construction of the sources or commencement of the sources and activities described in Paragraph (3) of Subsection [~~B~~] F of 20.11.41.2 NMAC shall comply with the administrative permit revision procedures in Subsection A of 20.11.41.28 NMAC. Emissions from the sources and activities described in Paragraph (3) of Subsection [~~B~~] F of 20.11.41.2 NMAC shall not be included in the facility-wide potential emission rate calculation that is described in [~~Subparagraphs (a) and (b) of Paragraph (1) of Subsection A~~] Subsections B and C of 20.11.41.2 NMAC[~~, unless the sources or emissions are subject to any NSPS or NESHAP requirement of 20.11.41 NMAC~~].

[20.11.41.2 NMAC – Rp, 20.11.41.2 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.3 STATUTORY AUTHORITY: 20.11.41 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; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.

[20.11.41.3 NMAC – Rp, 20.11.41.3 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.4 DURATION: Permanent.

[20.11.41.4 NMAC – Rp, 20.11.41.4 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.5 EFFECTIVE DATE: ##, ####, unless a later date is cited at the end of a section.

[20.11.41.5 NMAC – Rp, 20.11.41.5 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.6 OBJECTIVE: To establish the requirements for obtaining a [~~stationary source~~] construction permit, construction permit modification, relocation and administrative and technical permit revisions.
[20.11.41.6 NMAC – Rp, 20.11.41.6 NMAC, ~~1/15/09~~ ##/##/##]

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

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

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

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

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

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

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

G. "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 in the New Mexico state implementation plan approved by EPA, or promulgated by EPA through rulemaking, under Title I of the federal act, including Parts C or D;

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

(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~~] that applies to consumer and commercial products under Section 183(e) of the federal act; or

(e) of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the EPA administrator has determined that the 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~~] New Mexico 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; and

(7) any regulation adopted by the board in accordance with the city of Albuquerque and county of Bernalillo 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.

H. "Board" means the Albuquerque-Bernalillo county air quality control board or its successor board pursuant to the state act.

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

J. "Conflict of interest" for the purposes of accelerated review, means any direct or indirect relationship between the qualified outside firm and the applicant or other interested person that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the qualified outside firm in review of the application. A conflict of interest does not include any gifts, gratuities, financial or contractual relationship ~~of~~ that totals less than one hundred dollars ($100) in value for the 12 month period preceding department receipt of the application. A conflict of interest includes [~~but is not limited to the following examples~~]:

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

(2) the qualified outside firm [~~has~~] having provided goods or services to the applicant within one year [~~prior to~~] before the start, or during the term, of the accelerated review process;

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

(4) there is a current financial relationship between the qualified outside firm and the applicant. Current financial relationships include, but are not limited to:

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

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

(5) a director, officer, or employee of the qualified outside firm[~~, who~~] that will perform services under a contract pursuant to 20.11.41.32 NMAC, and has one or more personal, business~~,~~ or financial interests or relationships with the applicant or any director, officer or employee of the applicant [~~which~~] that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a contract;

(6) a director, officer or employee of the qualified outside firm was a director, officer or employee of the applicant within one year [~~prior to~~] before the start of the accelerated review process;

(7) except where allowed by the department, communication has [~~been made~~] occurred between the qualified outside firm and the applicant regarding the substance of the application before a qualified outside firm has been selected to perform accelerated review of an application; direct communication between the qualified outside firm and the applicant may take place [~~once~~] after the qualified outside firm has been selected by the department;

(8) [~~any~~] an affiliate of the applicant has any of the above [~~identified~~] described relationships with the qualified outside firm;

(9) [~~any~~] an affiliate of the qualified outside firm has any of the above [~~identified~~] described relationships with the applicant; and

(10) [~~any~~] an affiliate of the applicant has any of the above [~~identified~~] described relationships with any affiliate of the qualified outside firm.

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

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

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

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

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

P. "Emission unit" or **"unit"** means any article, machine, equipment, contrivance, process~~,~~ or process line [~~which~~] that emits or reduces, or may emit or reduce, the emissions of any air contaminant, except from motor vehicles.

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

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

S. "Federally enforceable" means all limitations and conditions that are enforceable by the administrator of the EPA, including all requirements [~~developed~~] adopted pursuant to 40 CFR Parts 60, [~~and~~] 61~~,~~ and 63; all

requirements included in any applicable state implementation plan; and any permit requirements [~~established~~] imposed pursuant to 40 CFR 52.21 or [~~under~~] regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

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

U. "Modification" or **"to modify"** means a 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; a relocation of a stationary source, unless previously established as a portable stationary source subject to specific permit conditions; or a revision that involves substantive changes that exceed the scope of a revision as defined by 20.11.41.28 NMAC, 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 state or local board or pursuant to the CAA; or

(4) unless previously limited by enforceable permit conditions:

(a) an increase in the production rate, if the 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 the 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.

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

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

X. "New Mexico ambient air quality standards" or **"NMAAQS"** means the ambient air quality standards promulgated by the New Mexico environmental improvement board.

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

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

AA. "North American industry classification system" or **"NAICS"** means the industry classification system used by the statistical agencies of the [~~Unites~~] United States and is issued by the federal office of management and budget and [~~replaces~~] replaced the standard industrial classification (SIC) system.

BB. "Operator" means the [~~specific~~] local organization or subdivision of the firm or person, whether private, corporate~~,~~ or public, that manages, on location, the operations of the stationary source.

CC. "Owner" means the person or persons who own a [~~facility or part of a facility~~] source.

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

EE. "Permit" means a [~~stationary source~~] construction permit for a source [~~construction~~] or a construction permit modification, relocation, or administrative or technical permit revision that has been issued or approved by the department pursuant to 20.11.41 NMAC. A permit includes constraints, emissions limitations and other conditions and authorizes a person to commence construction[~~, or to modify, relocate or make a~~] , modification, relocation, or technical revision to the permitted source[~~, facility~~] or operation; or commence operation of a facility that contains a source that is subject to 20.11.41 NMAC.

FF. "Permittee" means the person who has applied for and has obtained a [~~stationary source~~] construction permit for a source that has been issued a permit pursuant to 20.11.41 NMAC.

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

HH. "Potential emission rate" means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, (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 physical and operational design, but only if the limitation or the effect [~~it~~] the limitation would have on emissions is enforceable by the department [~~or the board~~] pursuant to the [~~Air Quality Control Act~~] state act or the federal Act.

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

JJ. "Public information hearing" or **"PIH"** means the hearing provided by the [~~permit applicant~~] department pursuant to 20.11.41.15 NMAC during which attendees can ask questions, provide comments and provide information; a PIH is not a hearing on the merits that results in a final decision at the close of the hearing.

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

LL. "Relocation" means to physically move a portable stationary source.

MM. "Shutdown" means the cessation of operation of a stationary source, which involves deactivating the air pollution controls and not activating the source to perform the purpose for which it was intended. Brief interruptions of operation that are normal for the type of source that operates in cyclic rather than near-steady-state mode are not [~~considered~~] a shutdown source for the purpose of 20.11.41 NMAC.

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

OO. "Standard industrial classification" or **"SIC"** means the code from the system used to classify all industries in the United States economy [~~which~~] that was administered by the federal statistical policy division of the office of management and budget and in 1997 was replaced by the North American industry classification system (NAICS).

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

QQ. "Stationary source" or **"source"** means any building, structure, equipment, facility, portable stationary source, or installation [~~which~~] that is either permanent or temporary, excluding a private residence, that emits or may emit any regulated air contaminant or any pollutant listed under Section 112(b) of the federal act, the [~~Air Quality Control Act~~] state act, or the laws and regulations in effect pursuant to the state 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~~] Air pollution activities shall be treated as the same industrial grouping if they have the same first two digits of an applicable North American industry classification system (NAICS) code.

RR. "Technical permit revision" or **"technical revision"** means a revision to a [~~stationary source~~] construction permit pursuant to Subsection B of 20.11.41.28 NMAC.

[20.11.41.7 NMAC – Rp, 20.11.41.7 NMAC, ~~1/15/09~~ ##/##/##]

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

[20.11.41.8 NMAC – Rp, 20.11.41.8 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.9 SAVINGS CLAUSE: Any amendment to 20.11.41 NMAC that is filed with the state records center and archives shall not affect actions pending for violation of the [~~air quality control~~] state act, a city or county ordinance, a prior version of 20.11.41 NMAC, another board regulation or a permit issued by the department. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed.

[20.11.41.9 NMAC – Rp, 20.11.41.9 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.10 SEVERABILITY: If for any reason any section, paragraph, sentence, clause, wording or application of 20.11.41 NMAC or any federal or New Mexico standards incorporated herein is held unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity or application of remaining provisions of 20.11.41 NMAC.
[20.11.41.10 NMAC – Rp, 20.11.41.10 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.11 DOCUMENTS: Documents incorporated and cited in 20.11.41 NMAC may be viewed at the Albuquerque environmental health department, [~~400 Marquette~~] One Civic Plaza NW, Albuquerque, NM 87102. [~~The~~] Permit applications, supporting documentation, [~~any~~] preliminary determinations made by the department, and ~~the~~ draft permits, if completed, shall be available for public inspection at the department's air quality division office at [~~11850 Sunset Gardens SW~~] One Civic Plaza NW, Albuquerque, New Mexico [~~87121~~] 87102.
[20.11.41.11 NMAC – Rp, 20.11.41.11 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.12 FEES FOR PERMIT APPLICATION REVIEW: [~~A~~] An application for a permit shall be accompanied by a check or money order in the amount required by 20.11.2 NMAC, *Fees*. No application shall be complete until the entire fee has been tendered. Checks shall be made payable to the city of Albuquerque as required by 20.11.2 NMAC, *Fees*.
[20.11.41.12 NMAC – Rp, 20.11.41.12 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.13 APPLICATION FOR PERMIT:

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

B. Applicant's public notice requirements: ~~Before the applicant submits the application required by Subsection D of 20.11.41.13 NMAC, the applicant shall comply with the public notice requirements of Paragraphs (1) through (3) of Subsection B of 20.11.41.13 NMAC if the applicant is applying for a permit or permit modification. If required by the department, the applicant shall comply with the same notice requirements if the applicant is applying for a portable stationary source relocation. The applicant shall:~~

If the applicant is applying for a permit or permit modification, then before the applicant submits the application required by Subsection ~~D~~ E of 20.11.41.13 NMAC, the applicant shall comply with the public notice requirements of Paragraphs (1) and (2) of Subsection B of 20.11.41.13 NMAC. If the applicant is applying for a portable stationary source relocation, then the department may require that the applicant comply with these same notice requirements. The applicant shall:

(1) ~~provide public notice by certified mail or electronic mail to the two representatives of the recognized neighborhood association that is closest to the proposed source and the two representatives of the neighborhood coalition that is closest to the proposed source; for areas within the Albuquerque city limits, the required contact information is maintained by the city of Albuquerque office of neighborhood coordination; for unincorporated areas of Bernalillo county, the required contact information is maintained by the Bernalillo county zoning, building and planning department;~~ provide public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, that are within one-half (1/2) mile of the exterior boundaries of the property on which the source is or is proposed to be located. Contact information shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department. The public notice shall include all information required by Subsection C of 20.11.41.13 NMAC. The applicant may submit a written request to the department proposing an alternative approach to providing public notice if the proposed source or modification is located at a site with large property boundaries or campus-like facilities. The applicant shall obtain prior written approval from the department before using an alternative approach to providing public notice.

~~**(2)** include in the public notice all information required by Subsection E of 20.11.41.13 NMAC; and~~

[~~**(3)**~~]**(2)** ~~until the department makes a final decision regarding the application.~~ prior to submitting the application, post and maintain a weather-proof sign provided by the department, posted at the more visible of either the proposed or existing facility entrance or if approved in advance and in writing by the department, at another location on the property ~~boundary~~ that is accessible to the public, if approved in advance and in writing by the department. The applicant shall list on the sign all information required by Subsection ~~B~~ C of 20.11.41.13 NMAC.

The applicant shall keep the sign posted until the department takes final action on the permit application. If an applicant can establish to the department's satisfaction that the applicant is prohibited by law from posting, at either location required by Paragraph (2) of Subsection B of 20.11.41.13 NMAC, the department may waive the posting requirement and may impose additional notification requirements.

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

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

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

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

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

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

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

[**B.**] ~~**C.**~~ D. A person who is seeking a ~~standard authority to construct~~ construction permit pursuant to 20.11.41 NMAC shall complete a permit application and file one complete original and one duplicate copy with the department. A person who is seeking a general construction permit shall complete the applicable general construction form pursuant to Subsection C of 20.11.41.31 NMAC and file one complete original form and a duplicate copy with the department. All applications shall be submitted with the fee required by 20.11.2 NMAC.

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

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

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

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

(4) sufficient attachments, including calculations, computations, EPA-approved air dispersion model or models executed under a protocol that has been approved in advance and in writing by the department, and all other analyses used by the applicant to [~~providing~~] provide information to describe the potential emission rate and nature of all regulated air contaminants that the source may emit, and the actual emissions that the source will emit under routine operations after construction, modification, relocation or technical revision, [~~along with~~] and estimates of potential emissions during malfunction, startup and shutdown;

(5) an operational and maintenance strategy detailing:

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

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

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

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

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

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

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

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

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

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

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

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

(15) documentary proof that applicant has complied with all public notice requirements, as required by Subsections [~~D~~] B and [~~E~~] C of 20.11.41.13 NMAC; documentary proof shall include the proof of [~~publication~~] delivery of certified mail or e-mail of the public notice required by Paragraph [~~(3)~~] [~~(2)~~] (1) of Subsection [~~D~~] B of 20.11.41.13 NMAC and a photograph of each notice posted as required by Paragraph [~~(4)~~] [~~(3)~~] (2)of Subsection [~~D~~] B of 20.11.41.13 NMAC.

[~~**D. Applicant's public notice requirements:** The applicant shall comply with the following public notice requirements of Paragraphs (1) through (5) of Subsection D of 20.11.41.13 NMAC if the applicant is applying for a permit or permit modification, and shall comply with the notice requirements if required by the department, regarding a portable stationary source relocation. The applicant shall:~~

~~**(1)** provide public notice by certified mail to every recognized neighborhood association with a boundary that is within one-quarter mile of the center of the proposed location;. the public notice shall be mailed to the two designated neighborhood association representatives on file at the city of Albuquerque office of neighborhood coordination for areas within the Albuquerque city limits and the Bernalillo county zoning, building and planning department for unincorporated areas of Bernalillo county;~~

~~**(2)** provide public notice by certified mail to the owners of record, as shown in the most recent property tax schedule, of all properties within 200 feet of the boundaries of the property on which the facility is located or proposed to be located or within one-quarter of a mile of the source;~~

~~**(3)** provide public notice by certified mail to the Bernalillo county manager; to the mayor of all municipal corporations and counties within a two-mile radius of the center of the property upon which the facility is or is proposed to be located; to the city of Albuquerque councilors and Bernalillo county commissioners of the districts within which the facility is or is proposed to be located; and to all Indian pueblos, Indian reservations and counties within a two-mile radius of the center of the property on which the facility is or is proposed to be located;~~

~~**(4)** publish public notice once in the newspaper of the largest general circulation in Bernalillo county. The notice shall be located in the legal notice section of the newspaper and at one additional location in the newspaper that is calculated to provide effective notice to the general public. The notice in the additional location shall be at least 96.8 square centimeters (15 square inches), with the shortest dimension at least 7.6 centimeters (three inches). The department may require the notice to be published in a language in addition to English.~~

~~**(5)** until the department makes a final decision regarding the application, post and maintain the public notice at a minimum of four publicly-accessible and conspicuous locations, including:~~

~~**(a)** a weather-proof sign meeting the minimum size as determined by the department, posted at the more visible of either the proposed or existing facility entrance or another location on the property boundary; and.~~

~~**(b)** three additional locations commonly frequented by the general public in the vicinity of the proposed or existing facility, such as city hall, a nearby post office, public library, community center, senior center or institution of learning.~~]

~~**E. Additional public notice requirements:** The public notice specified in Paragraphs (1) through and [(5)] (3) (2) of Subsection [D] B of 20.11.41.13 NMAC shall include the following:~~

~~**(1)** the applicant's name and address, and the names and addresses of owner or operator of the [facility] source or proposed [facility] source;~~

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

~~**(3)** the exact location of the facility source or proposed facility source;~~

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

~~(5) the maximum and [standard] normal operating schedules proposed for the source or facility; and~~

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

F. Changing, Supplementing or Correcting Applications:

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

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

G. Protection of confidential information:

(1) All records, reports or information relating to permit applications obtained by the department or the board from any person shall be available to the public for inspection and copying, ~~except if~~ unless a person has made a satisfactory showing to the department or the board that specific items or information or parts thereof, if made public, would divulge confidential business records, [~~or~~] methods or processes entitled to protection as trade secrets, information pertaining to national defense or information pertaining to national security as confirmed and agreed to by the department in writing. If the items or information are specifically marked by the person as confidential at the time of submittal, the department or the board shall then protect the following as confidential and not to be made a part of any public record unless the person expressly agrees, in writing, to its inspection, copying, or publication:

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

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

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

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

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

(5) The department shall protect information claimed and subsequently found to be confidential in accordance with the provisions of 74-2-1 NMSA 1978 and 18 U.S.C. Section 1905, except that any such record, report or information may be disclosed:

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

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

[20.11.41.13 NMAC – Rp, 20.11.41.13 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.14 PUBLIC NOTICE BY DEPARTMENT -- PUBLIC PARTICIPATION:

A. The department shall [~~make~~] maintain a list of all pending applications for permits available for public inspection.

B. [~~The department shall make the permit application and all supporting documentation available for public inspection. The application, supporting documentation, any preliminary determination made by the department, and the draft permit, if completed, shall be available for public inspection at the department's air quality division office at 11850 Sunset Gardens SW, Albuquerque, New Mexico 87121.~~

~~C.~~]If the department makes an affirmative administrative completeness determination:

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

[~~(1)~~](2) The department shall publish the public notice in the newspaper with the largest general circulation in Bernalillo county. The notice shall [~~include~~] state:

(a) the applicant's name and address;

(b) the proposed or existing location;

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

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

(e) [~~and~~] the ambient air quality impact as determined by air dispersion modeling, if required by the department; ~~and~~

~~(f) [that] the department's proposed approval or disapproval of [will issue] the permit application; [if the department determines the construction or modification requested in the application complies with all requirements of 20.11.41 NMAC, including ambient air quality standards.~~]

[~~(b)~~] ~~(g)~~(f) the location where the permit application and the department's analysis, [~~and a draft permit, if completed,~~] are available for public review;

[~~(c)~~] ~~(h)~~(g) that the public has 30 days to submit written comments and evidence to the department regarding the proposed permit ~~and the deadline for submitting written comments, and evidence~~ or to request a public information hearing regarding the application; the notice should specify the date by which all comments and evidence or a request for a PIH shall be submitted;

[~~(d)~~] ~~(i)~~(h) that the [~~applicant~~] department shall hold a public information hearing pursuant to 20.11.41.15 NMAC if the director determines there is significant public interest and a significant air quality issue is involved; and

[~~(e)~~] ~~(j)~~(i) that any person who does not ~~submit written comments and evidence to the department by the deadline~~ participate in the permitting action will not receive notification of the department's decision regarding the proposed permit, unless the person has delivered a written request for notice to the department.

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

[~~(3)~~] (4) The department shall allow all interested persons 30 days from the date the public notice is published to deliver to the department written comment and evidence regarding the application for a permit.

[~~(4)~~] (5) The department shall send notice of the department's action regarding the permit application and the reasons for the action to every person who participated in the permitting action. The applicant shall be notified by certified mail or electronic mail. All other interested persons who participated shall be notified by regular mail or electronic mail.

[~~(5)~~] (6) [~~the department shall provide a copy of the public notice to the mayor of each municipality within Bernalillo county, the Bernalillo county manager, every Albuquerque city councilor whose district is within one-quarter mile of the center of the proposed location, every Bernalillo county commissioner whose district is within one-quarter mile of the center of the proposed location, and to the two designated neighborhood association representatives on file at the city of Albuquerque office of neighborhood coordination for areas within the Albuquerque city limits and the Bernalillo county zoning, building and planning department for unincorporated areas of Bernalillo county, for every neighborhood association with a boundary that is within one-quarter mile of the center of the proposed location when the department submits the public notice for publication; and~~] ~~The department shall provide a copy of the public notice to the two representatives of the recognized neighborhood association that is closest to the proposed source and the two representatives of the neighborhood coalition that is closest to the proposed source. For areas within the Albuquerque city limits, the required contact information is maintained by the city of Albuquerque office of neighborhood coordination. For unincorporated areas of Bernalillo county, the required contact information is maintained by the Bernalillo county zoning, building and planning department.~~ The department shall provide a copy of the public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, that are within one-half (1/2) mile of the exterior boundaries of the property on which the source is or is proposed to be located. Contact information should be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department.

[~~(6)~~] (7) The department shall mail a copy of the public notice by regular or electronic mail to every person who submits a written request for a copy to the department.

(8) The department shall notify the state of New Mexico environment department by certified mail or electronic mail regarding every permit application for a source that is subject to 20.11.42 NMAC, *Operating Permits*, 20.11.60 NMAC, *Permitting in Nonattainment Areas* or 20.11.61 NMAC, *Prevention of Significant Deterioration.*

[20.11.41.14 NMAC – Rp, 20.11.41.14 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.15 PUBLIC INFORMATION HEARING (PIH):

A. Before the department makes a final decision regarding [~~the~~] a permit application, the department shall hold a public information hearing if the director determines, in the director's sole discretion, that there is significant public interest and a significant air quality issue is involved. A PIH is not an adjudicatory hearing on the merits. [~~The department shall make all arrangements regarding the public information hearing. The department shall pay all expenses of the hearing and provide and pay for notice of the public information hearing~~.] The [~~public information hearing~~] PIH shall be held [~~more~~] no fewer than 30 days before the deadline for the department to make a final decision regarding the permit application. It is within the sole discretion of the hearing officer whether to require attendees to be sworn before they can ask questions, provide comments or provide information. During the PIH, attendees can ask questions, provide comments and provide information regarding the requested air quality permitting action, but no final decision shall be made by the department at the close of the hearing.

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

(1) ~~arrange~~ arranging for a location for the [~~public information hearing~~] PIH, which shall be held near the proposed [~~facility location~~] source if reasonably feasible;

(2) ~~provide~~ providing an English-Spanish and Spanish-English translator at the [~~public information hearing~~] PIH if determined necessary by the department in its sole discretion;

(3) ~~provide~~ providing a hearing officer; the hearing officer shall [~~run~~] preside over the [~~public information hearing~~] PIH; shall give all [~~people~~] attendees present at the hearing a reasonable opportunity to [~~submit data, views or arguments orally or in writing~~] ask questions, provide comments and provide information regarding the requested air quality permitting action and to examine [~~witnesses testifying~~] attendees commenting at the hearing; [~~and~~] but shall not make a final decision regarding the permit application;

(4) [~~arrange for~~] ~~ask~~ asking the applicant to present the applicant's proposal and to answer questions from attendees at the [~~public information hearing~~] PIH;

(5) No fewer than 10 days before the PIH, ~~provide~~ providing a copy of the public notice by certified mail or electronic mail to the [~~president~~]-applicant, the ~~two~~ designated representative(s) of ~~each~~ the recognized neighborhood associations and recognized neighborhood coalitions ~~in the city of Albuquerque and county of Bernalillo~~ [that] ~~is~~ are [~~within one-quarter mile of the center of the property on which the facility is located or proposed to be located~~] ~~closest to the proposed source~~ within one-half (1/2) mile of the exterior boundaries of the property on which the source is or is proposed to be located; [~~no fewer than 10 days before the public information hearing~~] contact information should be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department; the notice shall contain the information required by Paragraphs (1) and (3)-(5) of Subsection [~~E~~] C of 20.11.41.13 NMAC, and the name of the contact person, the department and the address to which comments and inquiries may be directed; the notice of the [~~public information hearing~~] PIH shall be in [~~both~~] English and Spanish if the department determines notice in Spanish is necessary; if a [~~public information hearing~~] PIH notice is returned to the department undelivered, the department shall promptly confirm the address through the appropriate local government entity, and, if ~~possible~~ an address is available, shall [~~deliver~~] provide a second copy of applicant's PIH notice to the president or vice president of the neighborhood association or neighborhood coalition;

(6) ~~publish~~ publishing public notice of the PIH in the newspaper with the largest general circulation in Bernalillo county ~~and post notice of the~~ [~~public information hearing~~] ~~PIH~~ ~~as required by~~ [~~Paragraphs (3) and (4) of~~] ~~Subsection D A of 20.11.41.1315 NMAC~~ no fewer than 10 days before the [~~public information hearing~~] PIH; [~~In addition,~~] the notice shall include the date, time, and location of the PIH, the number of the proposed permit, and a statement that a final decision has not been made by the department regarding the proposed permit;

(7) ~~mail~~ mailing notice of the [~~public information hearing~~] PIH to all interested persons who have submitted written comments or evidence to the department and to all interested persons who have delivered to the department a written request for notice regarding the application; a request to inspect or copy shall not be considered a written comment for the purposes of [~~this~~] Paragraph (7) of Subsection B of 20.11.41.15 NMAC;

(8) ~~require~~ requiring department staff to attend the PIH and be present during the applicant's requested presentation and the comments and questions by the attendees; and

(9) ~~record~~ recording the PIH and include the recording in the administrative record for the permit application; the department shall provide a duplicate of the [~~tapes~~] recording to any person who requests a copy; the person requesting shall reimburse the department for the cost of the [~~duplicate tapes~~] copy before the department makes the [~~copies~~] copy; the person making the request for [~~copying~~] a copy may instead provide the department with [~~wrapped, new tapes~~] recording media that [~~meet~~] meets the department specifications, and the department will not impose a charge for copying; [~~If a transcript of the hearing is requested, the department shall arrange for a transcription to be made, and the cost of the transcript shall be paid promptly by the person who requested the transcript.~~] if a person ~~wants~~ requests a transcript of the hearing (the requestor), the department shall obtain an estimate of the cost of the transcription and inform the requestor; the requestor shall pay the estimated cost before the department orders the transcription; if the actual cost of the transcription is more than the estimate, the requestor shall pay the additional amount before the department provides the transcription; if the actual cost of the transcription is less than the estimate, the department shall reimburse the difference.

[20.11.41.15 NMAC – Rp, 20.11.41.15 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.16 PERMIT DECISIONS AND [~~APPEALS~~] AIR BOARD HEARING ON THE MERITS:

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

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

(2) If [~~the department determines~~] the application is deemed administratively incomplete or the department determines a different type of permit application is required, the department shall send a letter by certified mail or electronic mail to the applicant stating what additional information [~~or points of clarification are~~] or fees are ~~is~~ necessary before the department can [~~determine whether~~] deem the application [~~is~~] administratively complete. ~~A~~ The department ~~request for~~ may require information ~~shall be for information~~ that is necessary ~~for the department~~ to perform a thorough review of the application ~~and to take final action on the application and may include~~ including: technical clarifications, emission calculations, emission factor usage, additional application review fees if any are required by 20.11.2 NMAC and [~~replacement of~~] ~~requests for~~ new or additional air dispersion modeling. The letter shall state a reasonable deadline for the applicant to deliver the information [~~or clarification~~] , fees or air dispersion modeling. The applicant shall deliver the requested information, fees or air dispersion modeling [~~or clarification in writing~~] by the deadline set by the department. The department may extend the deadline for good cause as determined by the department. If the department does not receive the additional information, fees or modeling [~~or clarification~~] by the deadline, the department may deny the application. If the department has ruled an application administratively incomplete three times, the department shall send a letter by certified mail or electronic mail to the applicant stating the permit application is denied. Fees submitted for processing an application that has been denied shall not be refunded. If the department has denied the application, the applicant may submit a new application and the fee required for a new application.

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

B. [~~If the application is not subject to the requirements of 20.11.60 NMAC, *Permitting in Nonattainment Areas,* or 20.11.61 NMAC, *Prevention of Significant Deterioration,* then within 90 days after the department has determined the application is administratively complete, the department shall grant, grant subject to conditions or deny the permit, unless the director grants an extension for not more than 90 days for good cause, including the need to hold a public information hearing.~~

~~**C.** If the department fails to take action on the application within the deadlines specified in Subsection B of 20.11.41.16 NMAC, the department shall notify the applicant by certified mail that an extension of time is required to process the application. The notification shall specify in detail the grounds for the extension.~~] Within 90 days after the department has determined the application is administratively complete, the department shall issue the permit, issue the permit subject to conditions or deny the permit, unless the director grants an extension for not more than 90 days for good cause, including scheduling a PIH. If an extension of the 90 day deadline is needed to review and make a decision regarding the application, then 90 days after the department has determined the application is administratively complete, the department shall notify the applicant by certified mail

or electronic mail that an extension of time is required. The notification shall specify in detail the grounds for the extension.

[~~D.~~] **C.** The department shall [~~grant~~] issue the permit, [~~grant~~] issue the permit subject to conditions or deny the requested permit or permit modification based on information contained in the department's administrative record of the permit application. The administrative record shall consist of the application, [~~any~~] all other evidence submitted by the applicant, [~~any~~] all evidence or written comments submitted by interested persons, [~~any~~] all other evidence considered by the department, a statement of matters officially noticed and, if a [~~public information hearing~~] PIH has been held, the [~~evidence submitted at the hearing~~] PIH hearing record. The applicant has the burden of demonstrating that a permit [~~or permit modification~~] should be [~~approved~~] issued.

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

[~~F.~~] **E.** A person who participated in a permitting action before the department and who is adversely affected by the permitting action may file a petition for hearing before the board. The petition shall be in writing and shall be delivered to the board within 30 days from the date notice is given of the department's action. The petition shall conform to the requirements of Subsection B of 20.11.81.14 NMAC. The petitioner shall certify that a copy of the petition has been mailed or hand delivered to the applicant if the petitioner is not the applicant. A hearing before the board shall be conducted as required by 20.11.81 NMAC. Unless a timely request for a hearing is made, the decision of the department shall be final.

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

[~~H.~~] **G.** Any person adversely affected by an administrative action taken by the board may appeal in accordance with the state act at 74-2-9 NMSA 1978.

[20.11.41.16 NMAC – Rp, 20.11.41.16 NMAC, ~~1/15/09~~ ~~##/##/##~~]

20.11.41.17 BASIS FOR PERMIT DENIAL: After the department has determined a permit application is administratively complete, the department may deny the application if:

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

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

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

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

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

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

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

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

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

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

[20.11.41.17 NMAC – Rp, 20.11.41.17 NMAC, ~~1/15/09~~ ##/##/##]

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

[20.11.41.18 NMAC – Rp, 20.11.41.18 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.19 PERMIT CONDITIONS:

A. The contents of ~~the~~ a permit application specifically identified by the department shall become terms and conditions of the permit~~, permit modification or permit revision~~.

B. The department shall specify conditions upon a permit as the department determines to be appropriate, including:

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

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

(b) the emission rate specified in the permit application;

(2) a requirement that the source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of the federal act, state act or board regulations;

(3) compliance with applicable NSPS and NESHAP;

(4) imposition of reasonable restrictions and limitations to prevent or abate air pollution not relating to emission limits or emission rates [~~other than restrictions and limitations relating to emission limits or emission rates, including throughput limitations, hours of operation, and unpaved haul road speed limits~~]; examples include monitoring, recordkeeping, and reporting; reporting administrative revisions; notifications; posting of permit; and substitution of equipment not resulting in an increase in emissions.

(5) any combination of the above; and

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

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

(1) a schedule of construction;

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

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

(4) safe access to each port;

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

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

(7) periodic testing pursuant to 20.11.41.22 NMAC, *Performance Testing Following Startup*

(8) [~~periodic reports~~] maintaining records of the nature and amount of emission;

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

[~~**(9)**~~] **(10)** [~~performance~~] maintaining records of air pollution control equipment performance; and

[~~**(10)**~~] **(11)** monitoring, recordkeeping and reporting for hours of operation, throughput, capacity and other parametric information.

D. Every term or condition imposed by the department on a permit is enforceable to the same extent as a regulation of the board.

~~E. All permits issued pursuant to 20.11.41 NMAC after the XXXXX ##, #### effective date of 20.11.41 NMAC shall be valid for no longer than 10 years. Applications for a permit renewal shall be submitted to the department, with the required fee, one year before the permit expiration date~~.
[20.11.41.19 NMAC – Rp, 20.11.41.19 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.20 INFORMATION REGARDING PERMIT SUSPENSION OR REVOCATION:
[~~A. The department may suspend or revoke cancel a permit if:~~
~~(1) the construction of a new stationary source or modification of a stationary source has not commenced within one year from the date the permit was issued;~~
~~(2) during construction or modification, work is suspended for a total of one year or more;~~
~~(3) any permitted source has temporarily ceased operation for five years or more or permanently ceased operations; or~~
~~(4) the director determines based on any credible evidence that a person has violated or is violating a requirement or prohibition of the federal act, the state act, board regulation or a condition of a permit issued pursuant to 20.11.41 NMAC.~~
~~B. If a permit has been revoked for any reason included in Paragraphs (1) – (4) of Subsection A of 20.11.41.20 NMAC, a new application for a permit shall be submitted to the department if the applicant wishes to resume operation.~~
~~C. No fewer than 30 days before a permit suspension or revocation becomes effective, the department shall notify the permittee of the proposed action by certified mail or personal service. The notification shall include the date by which the permittee may either respond in writing to the department or make a written request for a public hearing before the board. The permittee's request for a hearing before the board shall be delivered to the board no fewer than 30 days after the permittee has received the notice of suspension or revocation. The permittee's response to the department or request for a board hearing shall state the reasons the permit should remain active. If the permittee does not deliver a written response to the department or a hearing request to the board by the required date, the suspension or revocation shall be final and, the department shall issue a final notice of suspension or revocation and send the final notice to the permittee by certified mail or personal service. The final notice shall state the date the permit suspension or revocation is effective. The permittee shall cease all construction and operation of the source no later than the date of permit suspension or revocation that is stated in the final notice.~~
~~D. If a timely request for public hearing is received by the board, the board shall hold the hearing within 60 days after receipt of the request. The board staff shall notify the permittee by certified mail of the date, time and place of the hearing. The burden of proof shall be upon the permittee at the hearing. The board may designate a hearing officer to take evidence in the hearing and may direct the hearing officer to provide proposed findings of fact, conclusions of law, a recommended decision with reasons for the recommendation, and a proposed final order. Based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action of the department.~~]
As authorized by the state act at NMSA 1978, Section 74-2-12, a violation of a requirement of the state act, a board regulation or a condition of a permit that has been issued pursuant to 20.11.41 NMAC may result in suspension or revocation of the permit. If the department initiates an enforcement action to suspend or revoke a permit, the department and the permittee shall comply with the procedures required by 20.11.80 NMAC, *Adjudicatory Procedures – Administrative Enforcement Hearings by Director.*
[20.11.41.20 NMAC – Rp, 20.11.41.20 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.21 PERMITTEE'S OBLIGATIONS TO INFORM THE DEPARTMENT AND DELIVER AN ANNUAL EMISSIONS INVENTORY:
A. After a permit is issued pursuant to 20.11.41 NMAC, the permittee shall inform the department by letter, facsimile or electronic mail of:
[~~A.~~] **(1)** the date of anticipated initial startup of the source no fewer than 30 days before the anticipated initial startup date;
[~~B.~~] **(2)** the date of anticipated initial startup of a portable stationary source no fewer than two days before the anticipated initial startup date;
[~~C.~~] **(3)** the date of actual initial startup of the source or portable stationary source no more than 15 days after actual startup has occurred;
[~~D.~~] **(4)** the date a portable stationary source leaves ~~and~~ or returns to Bernalillo county;
[~~E.~~] **(5)** any change of ownership, operator or permittee no more than 15 days after the change has occurred; and

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

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

[20.11.41.21 NMAC – Rp, 20.11.41.21 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.22 [~~NMAC~~] PERFORMANCE TESTING:

A. ~~Within 60 days after achieving the maximum production rate at which a source will be operated, but not more than 180 days after initial startup of the source, the department may require the permittee to conduct an initial performance test at the permittee's expense. The permittee shall notify the department no fewer than 30 days before the test date by submitting a testing protocol, including test methods, to the department for pre-approval and shall allow a representative of the department to be present at the test. Whenever the requirements of 40 CFR 60, 61 or 63 apply, the test methods specified in the code of federal regulations shall be used. No fewer than 30 days before the test date, the permittee shall submit for department review a written test protocol that includes the proposed test methods and operating conditions of the source during the performance test. Whenever the requirements of 40 CFR 60, 61 or 63 apply to the source, the test methods specified in the applicable code of federal regulations shall be used for all required testing unless an alternative test method is pre-approved in writing by the department. Test results will not be accepted by the department unless the protocol has been approved by the department before the test is conducted by the owner or operator. If the protocol is approved by the department, the permittee shall provide prior to notification of the performance test date to the department a minimum of 10 business days prior to notification of the performance test date to the department to allow a representative of the department to be present at the test. The permittee shall allow a representative of the department to be present at the test. No more than 30 days after the test is completed, the permittee shall deliver a written report of the test results to the department.~~

Within sixty (60) days after achieving the maximum production rate at which the newly constructed or modified stationary source will be operated, but not later than one hundred eighty (180) days after initial startup of the newly constructed or modified source, the owner or operator of the source may be required to conduct a performance test at the permittee's expense and in accordance with methods and under operating conditions approved by the department and to furnish the department with a written report of the results of the test. No more than 30 days after the test is completed, the permittee shall deliver the written report of the test results to the department. The permittee shall allow a representative of the department to be present at the test. The department may require the permitee to repeat the performance tests at the permittee's expense until compliance is demonstrated and testing is performed in a technically satisfactory manner as determined by the department.

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

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

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

(3) the test was technically unsatisfactory.

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

[20.11.41.22 NMAC – Rp, 20.11.41.22 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.23 TEMPORARY RELOCATION OF PORTABLE STATIONARY SOURCES:

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

B. The permittee of a portable stationary source [~~previously included in a permit issued pursuant to 20.11.41 NMAC~~] may submit a written request to the department seeking approval to temporarily relocate and operate the portable stationary source [~~at a proposed location~~]. Temporary relocations shall not exceed [~~at~~] a total of 365 consecutive days.

[~~B.~~] C. The permittee of a portable stationary source shall not construct or operate at the new location until the department approves the relocation request in writing.

[~~C.~~] D. The permittee of a portable stationary source [~~that has been issued a permit pursuant to 20.11.41 NMAC~~] shall submit a relocation application no fewer than 45 days before the date the permittee proposes to commence operations at a new location within Bernalillo county. The permittee shall operate the portable stationary source at the proposed new location [~~in a manner that is consistent with~~] as required by the permit conditions unless the department [~~approves or~~] imposes additional or more restrictive operational requirements or conditions in writing during the approval process. The relocation application shall:

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

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

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

(4) unless waived in writing by the department, include an EPA-approved air dispersion model executed for the proposed new location that demonstrates compliance with the NAAQS and the NMAAQS; the modeling protocol shall comply with the air dispersion modeling requirements of Paragraph (4) of Subsection [~~C~~] ~~D~~ E of 20.11.41.13 NMAC [~~unless waived in writing by the department~~];

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

(6) be signed by the operator, owner or an authorized representative certifying to the accuracy of all information [~~as represented~~] included in the application and any attachments.

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

[~~E.~~] F. The department may require the permittee to hold a public information hearing for good cause.

[~~F.~~] G. The department may deny the request to relocate the portable stationary source if the relocation application does not include all information required by Subsection C of 20.11.41.23 NMAC, or if the relocation application is submitted to the department fewer than 45 days before the proposed relocation date.

[~~G.~~] H. The department shall not approve the relocation if the department determines the relocation will result in an exceedance of any NAAQS or NMAAQS at the proposed new location.

[~~H.~~] I. No more than 45 days after the department receives the relocation application, the department shall approve the relocation, deny the relocation [~~or~~], approve the relocation with conditions or require that the permittee hold a public information hearing regarding the relocation request. The department shall notify the permittee by certified mail regarding the department's decision.

[~~I.~~] J. If the stationary source has been issued a permit pursuant to a board regulation but has not been designated in the permit as a portable stationary source, and the source wishes to relocate within Bernalillo county or be classified as a portable stationary source, the request to relocate or reclassify the source shall be treated as a proposed permit modification and the permittee shall comply with the requirements of 20.11.41.29 NMAC.
[20.11.41.23 NMAC – Rp, 20.11.41.23 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.24 EMERGENCY PERMITS:

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

B. [~~In order to prevent worsening an emergency situation, department personnel shall evaluate the emissions from the source to determine what conditions shall be included in the emergency permit.~~] In order to ensure that the public emergency is not worsened by excess emissions or improper air pollution control equipment,

the department shall verify that the source, when operating in accordance with the permit to be issued, can and will meet all applicable standards, emission limitations and conditions before the department authorizes startup.

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

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

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

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

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

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

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

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

(4) [~~The department shall provide a copy of the public notice required by Paragraph (2) of Subsection C of 20.11.41.24 NMAC to the two representatives of the recognized neighborhood association that is closest to the proposed source and the two representatives of the neighborhood coalition that is closest to the proposed source. For areas within the Albuquerque city limits, the required contact information is maintained by the city of Albuquerque office of neighborhood coordination. For unincorporated areas of Bernalillo county, the required contact information is maintained by the Bernalillo county zoning, building and planning department.~~] provide a copy of the public notice required by Paragraph (2) of Subsection C of 20.11.41.24 NMAC by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, that are within one-half (1/2) mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information should be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department; and

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

[~~C.~~] **D.** If a person [~~commits a negligent or unlawful act~~] violates a board regulation or permit condition, including by failing to apply in a timely manner for a permit, permit modification, relocation or technical revision, [~~or if a source is operated in a negligent or unlawful manner, then the act, failure to act or operation~~] then the violation shall not qualify as an emergency for the purposes of 20.11.41.24 NMAC.

[~~D.~~] **E.** The following requirements shall not apply to emergency permits processed pursuant to 20.11.41.24 NMAC: Subsection [~~D~~] B of 20.11.41.13 NMAC[~~; Subsection C of 20.11.41.14 NMAC; 20.11.41.15 NMAC;~~] and Subsections A and B of 20.11.41.16 NMAC.

[~~E.~~] **F.** [~~If required by the department,~~] The permittee shall not commence emergency construction, modification or relocation until the department has issued an emergency permit.

[20.11.41.24 NMAC – Rp, 20.11.41.24 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.25 NONATTAINMENT AREA REQUIREMENTS:

A. Applicability: 20.11.41.25 Applies to:

(1) a new source or modification of an existing source that will emit a regulated air contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration [~~included~~] provided in 20.11.41.33 NMAC, *Significant Ambient Concentrations*, Table 1, at a location that does not meet the standards incorporated in 20.11.8 NMAC, *Ambient Air Quality Standards*, for that contaminant;

(2) a new source or modification of an existing source that is not a major stationary source or major modification as defined in 20.11.60 NMAC, *Permitting in Nonattainment Areas,* and will emit a regulated air

contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration [~~incorporated~~] provided in 20.11.41.33 NMAC, *Significant Ambient Concentrations,* Table 1, at a location that does not meet the NAAQS for that contaminant; and

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

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

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

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

(a) [~~20.11.60.17 NMAC, *Emission Offset Baseline*~~] 20.11.60.15, *Baseline for Determining Credit for Emission and Air Quality Offsets*;

(b) 20.11.60.18 NMAC, *Emission Offsets Ratio*; and

(c) [~~20.11.60.20 NMAC~~] 20.11.60.25 NMAC, *Air Quality Benefit.*

C. An existing source that is subject to 20.11.41.25 NMAC shall demonstrate a net air quality benefit of at least a 20 percent reduction in ambient impact for each applicable contaminant. The 20 percent reduction shall be calculated by subtracting the projected source impact from the existing source impact and dividing the result by the existing source impact. The net air quality benefit ~~also~~ shall also comply with [~~20.11.60.20 NMAC~~] 20.11.60.25 NMAC, *Air Quality Benefit.*

[20.11.41.25 NMAC – Rp, 20.11.41.25 NMAC, ~~1/15/09~~ ~~##/##/##~~]

20.11.41.26 COMPLIANCE CERTIFICATION:

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

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

[20.11.41.26 NMAC – Rp, 20.11.41.26 NMAC, ~~1/15/09~~ ~~##/##/##~~]

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

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

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

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

B. The following are presumptively credible testing, monitoring or information gathering methods:

(1) any federally enforceable monitoring or testing method, including methods authorized or required by 40 CFR, parts 51, 60, 61, 63 and 75; and

(2) other testing, monitoring or information gathering methods that produce information comparable to information produced by any method authorized by Subsection A of 20.11.41.27 NMAC or Paragraph (1) of Subsection B of 20.11.41.27 NMAC, as determined by the department.

[20.11.41.27 NMAC – Rp, 20.11.41.27 NMAC, ~~1/15/09~~ ~~##/##/##~~]

20.11.41.28 ADMINISTRATIVE AND TECHNICAL PERMIT REVISIONS:

A. Administrative Permit Revision:

(1) An administrative permit revision may be used by the department or requested by ~~the~~ a permittee to revise a permit that has been issued pursuant to 20.11.41 NMAC in order to:

(a) correct a typographical error;

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

(c) incorporate a change in the permit if the change is limited to retiring an emission unit at the facility, which shall be effective when the department receives written notice that the emission unit has ceased operation; and

[(d)] incorporate a change in the permit to include a source or activity at the facility if the facility or activity is exempted by Paragraph (3) of Subsection ~~B~~ F of 20.11.41.2 NMAC.

(2) An administrative permit revision shall:

(a) not be subject to Subsection ~~D~~ E of 20.11.41.13 NMAC, *Applicant's Public Notice Requirements;*

(b) not be subject to 20.11.41.14 NMAC, *Public Notice by Department – Public Participation*;

(c) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*; and

(d) be submitted on forms provided by the department.

(3) When the department receives a revision form, the department shall review the form. If the department determines the revision qualifies as an administrative revision, the department shall file the revision with the permit. However, the procedure authorized by Subsection A of 20.11.41.28 NMAC may not be used to create federally enforceable conditions or emissions limitations to avoid any applicable requirement.

B. Technical Permit Revision:

(1) A technical permit revision may be requested by a permittee:

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

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

(c) if the permittee wishes to impose a voluntary reduction of an emission limitation or retire an emission unit that was included as a specific permit conditions pursuant to Subsection B of 20.11.41.19 NMAC, *Permit Conditions*;

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

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

(ii) has the same or lower capacity and potential emission rates;

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

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

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

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

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

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

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

(f) to incorporate a change in the permit [~~solely involving~~] that only involves the addition of air pollution control equipment or the substitution of a different type of air pollution control equipment to existing equipment if the requested addition or substitution shall not result in an increase in the potential emission rate.

(2) An application for a technical revision to a permit shall:

(a) not be subject to Subsection [~~D~~] B of 20.11.41.13 NMAC, *Applicant's Public Notice Requirements;*

(b) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*;

(c) not be subject to 20.11.41.14 NMAC, *Public Notice by Department – Public Participation*; and

(d) be submitted on forms provided by the department, with all information submitted by the applicant certified as required by Paragraph (13) of Subsection ~~C~~ D of 20.11.41.13 NMAC.

(3) Within 30 days of receipt of the application, the department shall approve or deny the application for the technical permit revision, or inform the applicant in writing that the request must be submitted as a permit modification.

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

(a) the revision does not meet the criteria included in Subsection B of 20.11.41.28 NMAC;

(b) in the judgment of the department, the revision would require a decision on a significant or complex issue, or involve a substantive change; or

(c) in the judgment of the department, the permittee has submitted multiple or subsequent applications for technical permit revisions under 20.11.41.28 NMAC that segment a larger revision or modification that otherwise would not be eligible for a technical permit revision.

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

[20.11.41.28 NMAC – Rp, 20.11.41.28 NMAC, ~~1/15/09~~ ##/##/##]

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

[20.11.41.29 NMAC – Rp, 20.11.41.29 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.30 PERMIT REOPENING, REVISION AND REISSUANCE

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

(1) additional applicable requirements of the federal [~~Clean Air Act~~] Act or the [~~New Mexico Air Quality Control Act~~] state act become applicable to the source, including excess emission requirements under the Title IV acid rain program;

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

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

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

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

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

C. A permit that has been reopened and reissued may be appealed pursuant to 20.11.81 NMAC.

[20.11.41.30 NMAC – Rp, 20.11.41.30 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.31 GENERAL [~~STATIONARY SOURCE~~] CONSTRUCTION PERMITS:

[~~**A. Issuance of general stationary source permits:**~~

~~**(1)** After notice has been provided as required by Subsections A-C of 20.11.41.14 NMAC and an opportunity for public participation in a public information hearing has been provided as required by 20.11.41.15 NMAC, the department may issue one or more general stationary source permits to an applicant. Each general stationary source permit shall cover numerous similar sources. General stationary source permits shall be issued to sources that are generally homogeneous in terms of operations, processes and emissions, and subject to the same or substantially similar requirements. General stationary source permits shall not be issued to sources that are subject to case-by-case standards or requirements.~~

~~**(2)** Each general stationary source permit shall:~~

~~**(a)** describe which sources may qualify to apply for a general stationary source permit; and~~

~~**(b)** specify the contents of a complete application for a general stationary source permit; in the general stationary source permit, the department may provide for applications which deviate from the requirements of 20.11.41.13 NMAC, if the applications include:~~

~~**(i)** all information necessary to determine qualification for, and to assure compliance with, the general stationary source permit; and~~

~~**(ii)** applicant's public notice requirements including, at a minimum, a notice: a) published once in the legal notices section of a newspaper in general circulation in the county or counties in which the property on which the facility is proposed to be constructed or operated is located; and b) posted at the proposed or existing facility entrance in a publicly accessible and conspicuous place on the property on which the facility is, or is proposed to be, located, until the general stationary source permit is granted or denied;~~

~~**(c)** contain permit terms and conditions which apply to all sources permitted as a general stationary source permit, and which include:~~

~~**(i)** sufficient terms and conditions to assure that all sources permitted and operating in accordance with the general stationary source permit will meet all applicable requirements under the federal Act, the New Mexico Air Quality Control Act, 74 NMSA 1978, including 20.11,60 NMAC, *Permitting in Nonattainment Areas,* 20.11.61 NMAC, *Prevention of Significant Deterioration*, 20.11.63 NMAC, *New Source Performance Standards For Stationary Sources*, 20.11.64 NMAC and *Emission Standards for Hazardous Air Pollutants For Stationary Sources*, and will not cause or contribute to air contaminant levels in excess of any national or New Mexico ambient air quality standard; and~~

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

~~**(iii)** as appropriate, terms and conditions to address and report emissions occurring during upsets, startups and maintenance;~~

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

A. General construction permits: General construction permits are issued to groups of sources that have similar operations, processes and emissions, are subject to the same or substantially similar requirements and have general construction permit forms that were approved by the department following the process described in Subsection~~s~~ B ~~or C~~ of 20.11.41.31 NMAC. A source that is required to obtain a permit pursuant to 20.11.41 NMAC but does not qualify for a general construction permit shall obtain a ~~standard~~ construction permit as required by 20.11.41.13 NMAC.

[~~**B. Revisions to a general stationary source permit:**~~

~~**(1)** After notice has been provided as required by Subsections A-C of 20.11.41.14 NMAC and an opportunity for public participation in a public information hearing has been provided as required by 20.11.41.15 NMAC, the department may revise a general stationary source permit. Notice of the proposed revision shall also be sent to the owner or operator of all sources possessing the same type of general stationary source permit.~~

~~**(2)** A revision of a general stationary source permit shall include a reasonable transition schedule for existing sources that possess a general stationary source permit to comply with the revision. The department shall revise the general permit terms and conditions only to the extent necessary to ensure that the requirements of Sub-paragraph (c) of Paragraph (2) of Subsection A of 20.11.41.31 NMAC are met.~~]

B. ~~General construction permit form approval~~ Approval of general construction permit form and revised general construction permit form:

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

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

(b) state the reason the department proposes ~~to~~ approval of the general construction permit form;

(c) specify the notice that ~~the department and~~ the applicant will be required to provide to the public if the proposed form is approved by the department and ~~an~~ the applicant uses the form to apply for a permit; ~~to include~~ at a minimum, the applicant shall:

(i) provide public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, as shown in the most current records of the city of Albuquerque office of neighborhood coordination and the Bernalillo County zoning, building and planning department, within one-half (1/2) mile of the exterior boundaries of the property on which the source is or is proposed to be located. The applicant may submit a written request to the department proposing an alternative approach to providing public notice if the proposed source or modification is located at a site with large property boundaries or campus-like facilities. The applicant shall obtain prior written approval from the department for any alternative approach to provide public notice. The public notice shall include all the information required by Subsection E of 20.11.41.13 NMAC; and

(ii) prior to submitting the application, post and maintain a weather-proof sign provided by the department, posted at the more visible of either the proposed or existing facility entrance or another location on the property that is accessible to the public, if approved in advance and in writing by the department. The applicant shall list on the sign all information required by Subsection E of 20.11.41.13 NMAC. The applicant shall keep the sign posted until the department takes final action on the permit application. If an applicant can establish to the department's satisfaction that the applicant is prohibited by law from posting at either location required by Subparagraph (i) of Paragraph ~~(3)~~ (1) of Subsection B of 20.11.41.~~13~~ 31 NMAC, the department may waive the posting requirement and may impose additional notification requirements as an alternative.

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

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

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

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

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

(3) Each general construction permit form shall:

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

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

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

(ii) applicant's public notice requirements pursuant to ~~Paragraphs (1) and (2) of Subsection B of 20.11.41.13 NMAC~~ Subparagraph (c) of Paragraph (1) of Subsection B of 20.11.41.31 NMAC and a statement that any person may provide written comment to the department within 15 days of receipt of the public notice;

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

(i) sufficient terms and conditions to assure that all sources permitted and operating in accordance with the general construction permit will meet all applicable requirements of the federal act, the state act

and board regulations, including 20.11.60 NMAC, *Permitting in Nonattainment Areas;* 20.11.61 NMAC, *Prevention of Significant Deterioration;* 20.11.63 NMAC, *New Source Performance Standards For Stationary Sources;* 20.11.64 NMAC and *Emission Standards for Hazardous Air Pollutants For Stationary Sources*, and will not cause or contribute to air contaminant levels in excess of any NAAQS or NMAAQS; and

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

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

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

(4) Before the department makes a final decision regarding a general construction permit form, the department shall hold a public information hearing (PIH) if the director determines, in the director's sole discretion, that there is significant public interest and a significant air quality issue is involved. A PIH is not an adjudicatory hearing on the merits. During the PIH, attendees can ask questions, provide comments and provide information regarding the general construction permit form, but no final decision shall be made by the department at the close of the hearing. The department shall make all arrangements and pay all expenses of the hearing including:

(a) arranging a location for the PIH;

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

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

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

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

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

~~(3)~~**(5)** The department may adopt the proposed general construction permit form or a substantially similar form if the ~~department concludes that the form and the procedures required in Subsection C~~ requirements of Subsection B of 20.11.41.31 NMAC ~~are consistent with duties and powers of the local agency as provided in the state act~~ have been met.

[~~**C. Application for a general stationary source permit:**~~

~~**(1)** The owner or operator of a source required to obtain a permit pursuant to 20.11.41 NMAC and which qualifies to apply for a general stationary source permit shall either:~~

~~**(a)** apply to the department for a general stationary source permit; or~~

~~**(b)** apply for a stationary source permit under 20.11.41.2 NMAC.~~

~~**(2)** Within 30 days of receiving an application for a general stationary source permit, the department shall review the application for completeness and shall grant or deny the application. The department shall not issue the general stationary source permit until at least 15 days after the date the applicant's public notice was initiated. If~~

~~the department issues a general stationary source permit, the department shall notify the applicant of its determination by certified mail. The department shall attach the general stationary source permit to a copy of the approved application.~~

~~(3) The department shall grant a general stationary source permit to a source only if:~~

~~(a) the application is complete and meets the requirements of 20.11.41.31 NMAC; and~~

~~(b) the source meets the terms and conditions of the general stationary source permit.~~

~~(4) The department may grant or deny the application for a general stationary source permit without repeating the public notice and participation procedures required under 20.11.41.14 NMAC and 20.11.41.15 NMAC.~~

~~(5) A person who participated in a permitting action in which the department made a determination regarding whether or not a source qualifies to apply for a general stationary source permit or revision may file a petition for hearing before the board as provided by Sections 74-2-7 H through L NMSA 1978. However, the petition shall not include a request for hearing before the board regarding the terms of the general stationary source permit form.~~

~~(6) It is a violation of 20.11.41 NMAC for a person to commence construction without a general stationary source permit if:~~

~~(a) construction of a source is commenced prior to the applicant's receipt of a general stationary source permit issued by the department; or~~

~~(b) it is determined after construction commences that a source does not qualify for a general stationary source permit.~~

~~(7) A general stationary source permit may be suspended or revoked, as provided by 20.11.41.20 NMAC. The owner or operator shall notify the department of the actual startup of a source and any ownership and operator changes, consistent with the provisions of 20.11.41.21 NMAC.]~~

~~**C. Revisions to a general construction form:** A general construction permit form that has been adopted by the department may be revised and adopted by the department after the department completes following procedure:~~

~~(1) The department shall provide notice of a proposed revision to a previously adopted general construction permit form by publication in the newspaper with the largest general circulation in Bernalillo county. The notice shall:~~

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

~~(b) state the reason the department proposes to revise the general construction form;~~

~~(c) specify the notice that the department and the applicant will be required to provide to the public if the revised form is approved by the department and an applicant uses the revised form to apply for a permit;~~

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

~~(e) describe the location where the proposed revision to the general construction form may be obtained;~~

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

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

~~(2) The department may adopt the proposed revised general construction permit form or a substantially similar form if the department concludes that the revised form and the procedures required in Subsection C of 20.11.41.31 NMAC are consistent with duties and powers of the local agency as provided in the state act.~~

~~(c) [and] the ambient air quality impact as determined by air dispersion modeling, if required; and~~

~~(f) [that] the department's proposed approval or disapproval of [will issue] the permit application; [if the department determines the construction or modification requested in the application complies with all requirements of 20.11.41 NMAC, including ambient air quality standards.]~~

~~[(b)] (g) the location where the permit application and the department's analysis, [and a draft permit, if completed,] are available for public review;~~

~~[(c)] (h) that the public has 30 days to submit written comments and evidence to the department regarding the proposed permit and the deadline for submitting written comments and evidence;~~

~~[(d)] (i) that the [applicant] department shall hold a public information hearing pursuant to 20.11.41.15 NMAC if the director determines there is significant public interest and a significant air quality issue is involved; and~~

~~[(e)] (j) that any person who does not submit written comments and evidence to the department by the deadline will not receive notification of the department's decision regarding the proposed permit~~

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

[~~**D. Modifications of a source included in a general stationary source permit:** Before a source that is included in a general stationary source permit can be modified, the permittee shall:~~

~~(1) notify the department in writing that a modification will occur and that the facility will continue to meet the conditions of the general stationary source permit after the modification is complete; and~~

~~(2) obtain a stationary source general construction permit from the department as required by 20.11.41 NMAC prior to the modification if the source will not continue to meet the conditions of the general stationary source permit after the modification.~~]

~~**D. Application for a general construction permit using an approved form:**~~

~~(1) The owner or operator of a source that is required to obtain a permit pursuant to 20.11.41 NMAC and that qualifies for a general construction permit shall either:~~

~~(a) submit an application to the department using the applicable general construction permit form that has been approved by the department; or~~

~~(b) submit an application to the department using the standard application form instead of the general construction permit form.~~

~~(2) Within 30 days after the department receives an application for a general construction permit, the department shall review the application for completeness and shall approve or deny the application. The department shall not issue the general construction permit until at least 15 days after the date the applicant has provided the public notice required by Paragraphs (1) and (3) of Subsection B of 20.11.41.13 NMAC. If the department issues a general construction permit, the department shall notify the applicant of the issuance by certified mail. The department shall attach the general construction permit to a copy of the approved application.~~

~~(3) The department shall issue a general construction permit to a source only if:~~

~~(a) the application is complete and meets the requirements of Subsection C of 20.11.41.31 NMAC; and~~

~~(b) the source meets the terms and conditions of the general construction permit.~~

~~(4) The department may issue the general construction permit or deny the application for a general construction permit without repeating the public notice and participation procedures required under 20.11.41.14 NMAC and 20.11.41.15 NMAC.~~

~~(5) A person who participated in a permitting action in which the department has determined that an applicant's source qualifies to apply for a general construction permit or revised permit may file a petition for hearing before the board as provided by 20.11.81 NMAC. However, the petition shall not include a request for hearing before the board regarding the terms of the general construction permit form.~~

~~(6) The owner or operator shall notify the department of the actual startup of a source and any ownership and operator changes as required by 20.11.41.21 NMAC.~~

~~(7) It is a violation of 20.11.41 NMAC for a person to commence construction without a general construction permit if:~~

~~(a) a general construction permit has not been issued by the department and received by the permittee; or~~

~~(b) it is determined after construction commences that a source does not qualify for a general construction permit.~~

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

~~**E. Modification of a source that has been issued a general construction permit:** Before a permittee can modify a source that has been issued a general construction permit, the permittee shall:~~

~~(1) notify the department in writing that a modification will occur and the source will continue to meet the conditions of the general construction permit after the modification is complete; and~~

~~(2) obtain a standard construction permit from the department as required by 20.11.41.13 NMAC before modifying the source if the source will not continue to meet the conditions of the general construction permit after the modification.~~

~~F. Suspension or revocation of a general construction permit: As described in 20.11.41.20 NMAC, a general construction permit may be suspended or revoked pursuant to 20.11.80 NMAC.~~

[20.11.41.31 NMAC – Rp, 20.11.41.31 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.32 ACCELERATED REVIEW OF APPLICATION:

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

(1) 20.11.41.12 NMAC, *Fees for Permit Application Review;*

(2) 20.11.41.13 NMAC, *Application for Permit;*

(3) 20.11.41.15 NMAC, *Public Information Hearing;*

(4) 20.11.41.16 NMAC, Permit Decisions and Air Board Hearings on the Merits

[~~(4)~~] **(5)** 20.11.41.18 NMAC, *Applicant's Additional Legal Responsibilities;*

[~~(5)~~] **(6)** 20.11.41.19 NMAC, *Permit Conditions;*

[~~(6)~~] **(7)** 20.11.41.20 NMAC, *Permit Cancellation, Suspension, or Revocation;*

[~~(7)~~] **(8)** 20.11.41.21 NMAC, *Permittee's Obligations to Inform the Department and Deliver an Annual Emissions Inventory;*

[~~(8)~~] **(9)** 20.11.41.22 NMAC, *Performance Testing;*

[~~(9)~~] **(10)** 20.11.41.23 NMAC, *Temporary Relocation of Portable Stationary Sources;*

[~~(10)~~] **(11)** 20.11.41.24 NMAC, *Emergency Permits;*

[~~(11)~~] **(12)** 20.11.41.25 NMAC, *Nonattainment Area Requirements;*

[~~(12)~~] **(13)** 20.11.41.26 NMAC, *Compliance Certification;*

[~~(13)~~] **(14)** 20.11.41.27 NMAC, *Enforcement;*

[~~(14)~~] **(15)** 20.11.41.28 NMAC, *Administrative and Technical Permit Revisions;*

[~~(15)~~] **(16)** 20.11.41.29 NMAC, *Permit Modification;*

[~~(16)~~] **(17)** 20.11.41.30 NMAC, *Permit Reopening, Revision and Reissuance;*

[~~(17)~~] **(18)** 20.11.41.31 NMAC, *General Construction Permits; and*

[~~(18)~~] **(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) through (8) of Subsection B of 20.11.41.14 NMAC.

[~~A.~~]**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 [~~under~~] 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 in the department's sole discretion.

(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.

[~~B.~~] **D. Requests for accelerated review:**

(1) At the sole discretion of the applicant, an applicant for a permit pursuant to [~~20.11.41.32~~] 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 [~~pursuant to~~] as required by Paragraph (3) of Subsection [~~A~~] 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 ~~corporate~~ certified check or money order ~~for~~ in the amount of the accelerated review filing fee as [~~specified in~~] 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) [~~Participation in the accelerated permit review process shall not relieve the applicant of any responsibilities imposed by a board regulation.~~

~~(4)~~] 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; [~~and~~]

(ii) the schedule for the review; and

(d) a notarized affidavit attesting that no conflict of interest exists [~~on~~] regarding the specific permit application.

(6) In the department's sole discretion, the department shall review the submittals and determine which persons qualify to review a specific application.

(7) If no qualified outside person [~~submits the four items required by~~] meets the requirements of Paragraph (5) of Subsection [~~B~~] C 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 [~~in accordance with~~] 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 ~~show~~ 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 application for accelerated review is administratively complete.

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

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

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

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

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

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

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

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

[~~C.~~] **E. Disclosure of conflict of interest during accelerated review:**

(1) The applicant and the qualified outside contractor have a continuing obligation to investigate

potential conflicts of interest and to immediately disclose any conflict of interest to the department in writing. If a conflict of interest is not disclosed as required by Subparagraph (d) of Paragraph (5) of Subsection [~~B~~] D of 20.11.41.32 NMAC and is later disclosed or discovered, the department may:

(a) deny the application pursuant to Subsection F of 20.11.41.17 NMAC;

(b) terminate accelerated review and review the application pursuant to 20.11.41.16 NMAC; or

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

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

[~~D.~~] **F. Issuance of a permit after accelerated review:**

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

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

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

[20.11.41.32 NMAC – Rp, 20.11.41.32 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.33 SIGNIFICANT AMBIENT CONCENTRATIONS -- NONATTAINMENT

Table 1.

Averaging Time

Pollutant	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_2S	--	--	--	--	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	--	--	--	--
NMHC	--	--	--	5.0 μg/m^3	--	--
Lead (Pb)			0.03 μg/m^3 quarterly			

[20.11.41.33 NMAC – Rp, 20.11.41.33 NMAC, ~~1/15/09~~ ##/##/##]

20.11.41.34 PERMIT STREAMLINING SOURCE CLASS CATEGORIES: [RESERVED]

[20.11.41.34 NMAC – Rp, 20.11.41.34 NMAC, ~~1/15/09~~ ##/##/##]

HISTORY OF 20.11.41 NMAC:

Pre-NMAC History: The material in 20.11.41 NMAC 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. 20, Permits. 3/24/82;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 3/24/82;

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

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

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

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

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

History of Repealed Material: [Reserved]

Other History:

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, filed 12/16/94 91 was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.41, Authority-To-Construct Permits, filed 10/27/95.

20 NMAC 11.41, Authority-To-Construct Permits, filed 10/27/95 was **renumbered, reformatted, amended and replaced** by 20.11.41 NMAC, Authority-To-Construct Permits, effective 10/1/02.