(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated new source review pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

[~~(2)~~](4) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.11.61.20 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.11.61.20 NMAC shall apply.

II. "Major source baseline date" means:

(1) in the case of particulate matter and sulfur dioxide, January 6, 1975; and

(2) in the case of nitrogen dioxide, February 8, 1988.

JJ. "Major stationary source"

(1) means:

[~~(1)~~](a) any stationary source listed in Table 1 of 20.11.61.26 NMAC which emits, or has the potential to emit, [~~emissions equal to or greater than~~] 100 tons per year or more of any regulated new source review pollutant; ~~or~~

[~~(2)~~](b) notwithstanding the stationary source size specified in Subparagraph (a) of Paragraph (1) of Subsection JJ of 20.11.61.7 NMAC, any stationary source [~~not listed in Table 1 of 20.11.61.26 NMAC and~~] which emits, or has the potential to emit, 250 tons per year or more of any regulated new source review pollutant; or

[~~(3)~~](c) any physical change that would occur at a stationary source not otherwise qualifying under [~~Paragraphs (1) or (2) of~~] Subsection JJ of 20.11.61.7 NMAC, as a major stationary source if the change would constitute a major stationary source by itself. {40 CFR 51.166(b)(1)(i)~~(c)~~}

[~~(4)~~](2) A major source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

[~~(5)~~](3) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 of 20.11.61.26 NMAC or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

KK. "Mandatory federal class I area" means any area identified in 40 CFR Part 81, Subpart D.

LL. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or major modification subject to 40 CFR 52.21, or 20.11.61 NMAC, submits a complete application.

(1) The trigger dates are:

(a) August 7, 1977, for particulate matter and sulfur dioxide, and

(b) February 8, 1988 for nitrogen dioxide.

(2) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) the area in which the proposed major stationary source or major modification would construct is designated as attainment or unclassifiable under [~~section 107(d)(1)(D) or (E)~~] Section 107(d)(i)(D) or (E) of the federal Act for the pollutant on the date [~~the application is determined to be complete, consistent with~~] of its complete application under 40 CFR 52.21 or 20.11.61 NMAC, and

(b) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(3) Any minor source baseline date established originally for the TSP [~~increment~~] increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the department may rescind any [~~TSP~~] such minor source baseline date [~~if~~] where it can be shown, to the director's satisfaction that, either the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering [~~the minor source baseline~~] that date did not result in a significant amount of PM_{10} emissions. {40 CFR 51.166}

MM. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

NN. "Necessary preconstruction approvals or permits" mean those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

OO. "Net emissions increase" means that,

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~~limitations for PM, $PM_{2.5}$, and PM_{10} in PSD permits; Compliance with emissions limitations for PM, $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of 20.11.61 NMAC unless the applicable implementation plan required condensable particulate matter to be included. {5/16/08 FR regarding 40 CFR 51.166(b)(49)(vi)}~~

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WW. "Replacement unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

XX. "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of [~~Subsection XX of 20.11.61.7 NMAC~~] 20.11.61 NMAC, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

YY. "Significant" means:

(1) in reference to a net emissions increase or the potential of a source to emit [~~air pollutants~~] any of the pollutants listed in Table 2 of 20.11.61.27 NMAC, a rate of [~~emission~~] emissions that would equal or exceed any of the corresponding emission rates listed in Table 2 of 20.11.61.27 NMAC; {5/16/08 FR regarding 40 CFR 51.166(b)(23)(i)}

(2) in reference to a net emissions increase or the potential of a source to emit a regulated new source review pollutant that Paragraph (1) of Subsection YY of 20.11.61.7 NMAC, does not list, any emissions rate; and

(3) notwithstanding Paragraph (1) of Subsection YY of 20.11.61.7 NMAC, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour average). {after 20.11.61.27 NMAC re: 40 CFR 51.166(b)(23)(i)}

ZZ. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant for that pollutant.

AAA. "Stationary source" means any building, structure, facility, or installation which emits, or may emit, any regulated new source review pollutant.

BBB. "Temporary source" means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

CCC. "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

DDD. "Volatile organic compound (VOC)" means any [~~organic~~] compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions; [~~that is, any,~~] this includes any such organic compound other than those which the administrator designates as having negligible photochemical reactivity under 40 CFR 51.100(s). {40 CFR 51.100(s)}

[20.11.61.7 NMAC - Rp, 20.11.61.7 NMAC, 1/23/06; A, 5/15/06]

20.11.61.8 SAVINGS CLAUSE: Any amendment to 20.11.61 NMAC, *Prevention of Significant Deterioration* that is filed with the state records center and archives shall not affect actions pending for violation of a city or county ordinance or board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or section in effect at the time the violation was committed.

[20.11.61.8 NMAC - Rp, 20.11.61.9 NMAC, 1/23/06]

~~**A.** The requirements of this 20.11.60 NMAC shall apply as though construction had not yet commenced at the time that a source or modification becomes a major source or major modification solely due to a relaxation in any enforceable limitation established after August 7, 1980.~~ {moved to 20.11.60.15.B NMAC}

~~**B.** The issuance of a permit by the department shall not relieve any owner or operator of the responsibility to comply with the provisions of the Air Quality Control Act, Sections 74-2-1 to 74-2-17, NMSA 1978, any applicable regulations of the board, and any other requirements under local, state, or federal law.~~ {moved to 20.11.60.15.A NMAC}

~~**C.** Any owner or operator who commences construction or operates a major stationary source or major modification without, or not in accordance with, a permit issued under the requirements of 20.11.60 NMAC shall be subject to enforcement action.~~

~~**D.** Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within 18 months of the projected and approved commencement date. The director may extend the 18-month period upon a satisfactory showing that an extension is justified.~~

~~**E.** For phased construction projects, the determination of the lowest achievable emission rate shall be reviewed and modified as appropriate at the latest reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.~~

~~**F.** If the owner or operator previously issued a permit under 20.11.60 NMAC applies for an extension as provided for under Subsection D of 20.11.60.13 NMAC, and the new proposed date of construction is greater than 18 months from the date the permit would become invalid, the determination of lowest achievable emission rate shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.~~]

[20.11.60.13 NMAC - Rp, 20.11.60.12 NMAC, 1/23/06]

20.11.60.15 ENFORCEABLE PROCEDURES:

A. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, State or Federal law, including provisions of the Air Quality Control Act, Sections 74-2-1 to 74-2-17, NMSA 1978, and any applicable regulations of the board.

B. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 20.11.60 NMAC shall apply to the source or modification as though construction had not yet commenced on the source or modification. {after 20.11.60.13.A & B NMAC re: 40 CFR 51.165(a)(5)}

[20.11.60.15 NMAC - N, x/xx/xx]

20.11.60.16 PROVISIONS FOR PROJECTED ACTUAL EMISSIONS:

[~~F.~~] Except as otherwise provided in Subsection F of 20.11.60.16 NMAC, the following specific provisions apply with respect to any regulated new source review pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Subsection F of 20.11.60.16 NMAC, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in [~~Paragraphs (1) through (3) of Subsection II of 20.11.60.7 NMAC~~] Subparagraphs (a), (b) and (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC for calculating projected actual emissions. {after 20.11.60.12.F NMAC} Deviations from these provisions will be approved only if the department specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in Subsections A through F of 20.11.60.16 NMAC. {12/21/07 FR regarding 40 CFR 51.165(a)(6), ~~& 40 CFR 52.21~~}

[~~(1)~~] **A.** Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

[~~(a)~~](1) a description of the project;

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[~~(b)~~](2) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

[~~(c)~~](3) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under [~~Paragraph (3) of Subsection II of 20.11.60.7 NMAC~~] Subparagraph (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

[~~(2)~~] **B.** If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of Subsection F of 20.11.60.12 NMAC to the department. Nothing in Paragraph (2) of Subsection F of 20.11.60.12 NMAC shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals [~~and/~~]or permits must be obtained before beginning actual construction.

[~~(3)~~] **C.** The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in [~~Subparagraph (b) of Paragraph (1) of Subsection F of 20.11.60.12 NMAC~~] Subparagraph (a) of Paragraph (2) of Subsection A of 20.11.60.16 NMAC; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

[~~(4)~~] **D.** If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under [~~Paragraph (3) of Subsection F of 20.11.60.12 NMAC~~] Subsection C of 20.11.60.16 NMAC setting out the unit's annual emissions during the year that preceded submission of the report.

[~~(5)~~] **E.** If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in [~~Paragraph (1) of Subsection F of 20.11.60.12 NMAC~~] Subsection A of 20.11.60.16 NMAC, exceed the baseline actual emissions (as documented and maintained pursuant to [~~Subparagraph (c) of Paragraph (1) of Subsection F of 20.11.60.12 NMAC~~] Paragraph (3) of Subsection A of 20.11.60.16 NMAC) by a significant amount for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection (as documented and maintained pursuant to [~~Subparagraph (c) of Paragraph (1) of Subsection F of 20.11.60.12 NMAC~~] Paragraph (3) of Subsection A of 20.11.60.16 NMAC). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

[~~(a)~~](1) the name, address and telephone number of the major stationary source;

[~~(b)~~](2) the annual emissions as calculated pursuant to [~~Paragraph (3) of Subsection F of 20.11.60.12 NMAC~~] Subsection C of 20.11.60.16 NMAC; and

[~~(c)~~](3) any other information that the owner or operator wishes to include in the report, (for example, an explanation as to why the emissions differ from the preconstruction projection).

F. A "reasonable possibility" under 20.11.60.16 NMAC occurs when the owner or operator calculates the project to result in either:

(1) a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection NN of 20.11.60.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated new source review pollutant; or

(2) a projected actual emissions increase that, added to the amount of emissions excluded under Subparagraph (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection NN of 20.11.60.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated new source review pollutant; for a project for which a reasonable possibility occurs only within the meaning of Paragraph (2) of Subsection F of 20.11.60.16 NMAC, and not also within the meaning of Paragraph (1) of Subsection F of 20.11.60.16 NMAC, then the provisions in Subsections B through E of 20.11.60.16 NMAC do not apply to the project. {~~after 20.11.60.12.F NMAC, re:~~ 12/21/07 FR, re: 40 CFR 51.165(a)(6)(vi)}

G. **Information requests.** The owner or operator of the source shall make the information required to be documented and maintained pursuant to [~~Subsection F of 20.11.60.12 NMAC~~]20.11.60.16 NMAC available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii). {after 20.11.60.12.G NMAC re: 40 CFR 51.165(a)(7)}

[20.11.60.16 NMAC - N, x/xx/xx]

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