

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On February 13, 2008, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a combined public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The purpose of the combined hearing is to receive testimony regarding:

- Proposal to amend **20.11.20 NMAC, *Fugitive Dust Control***.
- Proposal to incorporate a newly-amended 20.11.20 NMAC into the New Mexico State Implementation Plan for air quality (SIP).

These proposed amendments were developed in response to the requirement of 20.11.20.2(C) NMAC, which states:

“**20.11.20.2 SCOPE:**

C. Exempt for three years: The following eight sources of fugitive dust in Bernalillo County shall be exempt from the requirements of this part for three years from the effective date of this part. Before the three-year exemption expires, the board shall hold a hearing that includes a review of an emissions inventory of the eight sources and other significant sources of fugitive dust in Bernalillo County and decide if the exemptions shall be continued. If one or more of the three-year exemptions expire, the board shall also review the fugitive dust control fees to determine if they are adequate to support the fugitive dust control program.

- (1) Areas zoned for agriculture and used for growing a crop; and
- (2) bicycle trails, hiking paths, and pedestrian paths, horse trails or similar paths used exclusively for purposes other than travel by motor vehicles; and
- (3) unpaved roadways serving six residential dwellings or fewer; and
- (4) unpaved roadways less than one-quarter mile in length that are not short-cuts; and
- (5) unpaved roadways on private easements serving residential uses that are in existence at the time this part becomes effective; and
- (6) unpaved roadways on United States department of agriculture forest service or United States department of interior park service lands if the roadways are more than one-quarter of a mile from an occupied residence; and
- (7) lots occupied by dwellings used solely for residential purposes or solely for non-commercial livestock operations smaller than three quarters of an acre, not including lots smaller than three-quarters of acre used for other purposes; and
- (8) unpaved roadways within properties used for ranching and unpaved roadways within properties owned or controlled by the United States department of energy or department of defense. However, this exemption only applies if the public does not have motor vehicle access to the roadways”.

The Air Quality Control Board has extended their deadline to hold a hearing and reach a decision on whether or not to continue the aforementioned exemptions. The time extension also allowed the AQD to submit additional proposed amendments to 20.11.20 NMAC, *Fugitive Dust Control*. A summary of all proposed amendments to 20.11.20 NMAC, *Fugitive Dust Control*, follow:

Major Proposed Changes

- Changing the eight, three-year exemptions to six “conditionally exempt sources” which would only be subject to 20.11.20 NMAC if the Department determines the fugitive dust emitted may adversely and significantly affect human health within Bernalillo county. Unpaved roads serving six or fewer residential dwellings and unpaved roads less than ¼ mile in length that are not short cuts – would no longer be exempt.
- All lots smaller than ¾ acre used for any purpose would be conditionally exempt.
- New conditions available for claiming a high wind affirmative defense.
- Mandatory perimeter fencing specifications and entry/exit apron device as control measures for all fugitive dust control construction permits.

Proposed New Definitions

- “Business Day”
- “Greenwaste”
- “Stockpile”
- “Transfer of Permit”

Proposed Modifications to Current Definitions

- “Dust suppressant” (removing the word ‘water’ from the definition)
- “Fugitive Dust Control Permit” to “Fugitive Dust Control Construction Permit”
- “High Wind Event” (removing the 5 minute – 30 mph average and adding new language with input from staff meteorologist)
- “Paved” or “paving” or “paved roadway” (adding routinely-maintained asphalt millings)
- “Silt” (New ASTM citation from city testing lab document)
- “Stabilized” (include tie-in to an exceedance of a standard, not just violation)
- “Visible Fugitive Dust” (replacing anthropogenic with airborne)
- “Visible Fugitive Dust Detection Method” (correction for section citation)

Proposed Clarification to Current Definitions

- “Disturbed Surface Area”
- “Earth Moving Activity”
- “Fugitive Dust”
- “Fugitive Dust Control Plan”
- “Large Area Disturbance”
- “Permittee”
- “Programmatic Permit”
- “Reasonably Available Control Measures”
- “Responsible Person”
- “Short Cut”
- “Track-Out”

Proposed Repeal of Definitions

- “High Wind Event Threshold Level” (no longer applicable to high wind event situation)

Proposed Elimination of Language No Longer Applicable or Redundant

- Fugitive dust control permits in existence prior to March 2004
- Large Scale Interim Status Permits
- Observer breaks during visible fugitive dust detection method
- Repetitive statements concerning >3/4 acre to 25 acres ; and >25 acre requirements for permits
- ‘Hearing before the Board’ language removed because the Board has recently adopted 20.11.81 NMAC, *Adjudicatory Procedures – Air Quality Control Board*
- Method for determining soil moisture content in the field for high wind event affirmative defense
- Requirement for providing universal property code (UPC), latitude and longitude, or UTM coordinates

Proposed New Language

- Stockpile RACM
- Non-Refundable filing and review fees
- Project signs for all permits issued
- Filing and review fee requirement for demolition greater than 75,000 cubic feet
- Greenwaste control instead of mechanical leaf blower control
- Re-application or other control for long term native grass seeding that fails
- Specify manager, supervisor, scientist, field operations officer or health specialist as signature authorities for permits issued in lieu of authorized Department representative
- Requirements for active operations during an announced high wind event
- Soil moisture standards for high wind event affirmative defense
- Use of local regulation, 20.11.7 NMAC, *Variance Procedure* in lieu of State Act variance procedure.
- Immediate attempt to contact of a responsible person by an observer during a visual determination of fugitive dust if danger to health or safety is evident.

Proposed Rewording of General Language (Clarification and Modification)

- Consolidate operator under owner (will mainly be specific in the permit application to eliminate an extra signature section)
- Separate sections for programmatic permits and construction permits
- High wind event
- Continuance or re-initiation of active operations during a declared high wind event
- Requirements for staff to be certified for visual determination of fugitive dust (by Method 9 ground school at a minimum)
- Scope, Objective, and General Provisions
- Enforcement terminology

- Re-align paragraphs for permits, permit application processing, and enforcement under each appropriate heading
- Streamlined and clarified minimum application requirements for fugitive dust control construction permits
- Informal review meeting possible during permit application process
- Informal review meeting possible upon issuance of an administrative compliance order
- Public outreach & Training

Proposed Additional Requirements Necessary

- Amend 20.11.2 NMAC, *Fees*, in order to correct fugitive dust programmatic fee charges, and to add a demolition fee charge on facilities larger than 75,000 cubic feet that require a fugitive dust construction permit
- Develop new application forms for fugitive dust control permits

Following the combined hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adoption of the proposed regulation amendments and incorporating the newly-amended regulation into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require air pollution sources within Bernalillo County to comply with air quality standards.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written Notice Of Intent (NOI) before 5:00pm on Tuesday, January 29, 2008 to: Attn: February Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW, in advance of the hearing. The NOI shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on February 6, 2008. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660. Alternatively, interested persons may also download the Public Review Draft from the Air Quality Division website, <http://www.cabq.gov/airquality/>

NOTICE FOR PERSON WITH DISABILITIES: Notice to persons with disabilities: If you have a disability and require special assistance to participate in a Board meeting please call: 311 (Voice) or 1-800-659-8331 (TTY).