



THE UNIVERSITY *of*  
NEW MEXICO

Department of Safety and Risk Services (SRS)  
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Albuquerque, NM 87131-0001  
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June 26, 2007

**Safety Services**

MSC07 4100  
Phone: (505) 277-2753  
Fax: (505) 277-9006

Campus Safety  
Chemical Safety  
Environmental Affairs  
Fire Safety  
Hazardous Materials  
Industrial Hygiene  
Radiation Safety  
Recycling

Albuquerque Environmental Health Department  
Air Quality Division (AQD)  
11850 Sunset Gardens, SW  
Albuquerque, NM 87121

RE: Comments on Proposed Modifications to Fugitive Dust Control Regulation  
20.11.20 NMAC

Dear Mr. Neal Butt:

Thank you for requesting review & comment on the Fugitive Dust Control Regulation 20.11.20 NMAC. This is an important regulation for striking a balance to maintaining healthy air quality below the NAAQS while allowing economic development to grow the tax base that ultimately benefits the City, UNM and our community in general. Please continue to keep me informed and involved as this regulation evolves.

**Risk Services**

MSC06 3560  
Phone: (505) 277-9790  
Fax: (505) 277-9799

Insurance Claims  
Safety Training  
Workers' Compensation

**COMMENTS & RECOMMENDATIONS**

I have the following comments and recommendations regarding the 6/6/07 "Stakeholder Review Draft" of Fugitive Dust Control Regulation 20.11.20 NMAC. I have identified and addressed them section by section in the numerical order of the proposed new regulation as follows:

20.11.20.2.C.

Thank you for retaining the 6 conditional exemptions that allow low-impact quality of life activities (e.g., non-motorized trails) and land uses (e.g. agriculture, ranching). Please do not consider expanding the trail exemptions to include motorized trails since motorcycles, ATVs, etc., on unpaved trails do generate unhealthy dusty conditions on the trails and in surrounding areas.

Thank you for removing the exemption for short publicly-accessible roads, even ones that serve 6 or less residences. For instance, despite serving far more than 6 residences and being longer than ¼ mile, Kitsch Rd. and Jon Kitch Rd., both Bernalillo County (B.C.) public unpaved roads in the East Mountain area, get lots of vehicular traffic and generate dust from folks that are simply lost when following the north frontage road along I-40 (North Zamora Road). In 2006, my neighbors & I submitted a formal project request to B.C. (with a Cc to Isreal Tavarez) to at least apply asphalt millings to control dust from these dusty unpaved B.C. public roads. To date, the B.C. Public Works Department still has not responded to our request nor complied with this regulation.

20.11.20.2.C.3

Please change “private” easements to “privately-owned” easements to be consistent with the 20.11.20.7.X definition.

20.11.20.2.C.4

Please make sure that the publicly accessible unpaved roadways of all the several federal agencies listed are all regulated as currently worded. For instance, the Sandia District of Cibola National Forest has several publicly accessible unpaved roadways that are heavily used within Bernalillo County and they admittedly have had no Programmatic Fugitive Dust Control Permit or Plan to date.

20.11.20.7.U

Regarding the definition of “Paved” or “paving” or “paved roadway”, the AQD’s interpretation of recycled asphalt has been a very important for the University of New Mexico (UNM) regarding the surfacing of temporary parking lots. Application & maintenance of asphalt millings is much less expensive than other conventional paving methods, which is especially important for commissioning temporary parking lots. Dan Warren, the lead author of the original version of 20.11.20 NMAC, had always kindly interpreted recycled asphalt to include asphalt millings. Dan’s logic was asphalt millings compact well, don’t roll & grind like gravel (which makes more & new dust) and dust sticks its surfaces, so it was a sufficient surfacing for dust control in traffic areas. Since Dan has retired from the AQD, it would be good to formalize that interpretation by specifically listing “asphalt millings” in this definition. In UNM’s experience, asphalt millings have sufficiently controlled dust emissions. That is why I was also open to B.C. Public Works having that lower cost option for controlling dust on their Kitsch and Jon Kitch public roads around my private residence.

20.11.20.7.Y

Since the means to comply with permits and regulations typically involve the commitment of financial resources, it may be wise to require the signature of a corporate officer, instead of managers, scientists, supervisors, etc.. Corporate officer signature is required for Authority-to-Construct and other Clean Air Act related permits, so why not with Fugitive Dust Control?

20.11.20.26

If the lecture section of the 40 CFR 60 Method 9 certification course is required for dust inspectors, why not also require the related field certification as well so that the inspector’s readings can stand up in court?

20.11.20.26.G

Please change the last sentence to read “If the permittee or responsible person as identified in the permit fails to take all required actions, the owner or operator, if different, shall be promptly contacted by the department and take all actions required to prevent or satisfactorily resolve a violation of 20.11.20 NMAC, including stopping active operations, if necessary.”

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**From:** Liberatore, John J.  
**Sent:** Wednesday, August 22, 2007 4:51 PM  
**To:** 'hershber@unm.edu'  
**Cc:** Tavarez, Isreal L.; Albrecht, Christopher P.; Nieto, Margaret ; Butt, Neal T.  
**Subject:** Response to fugitive dust stakeholder comments

Mr. Hershberger,

Attached are the responses from the Air Quality Division's subcommittee concerning the fugitive dust control regulation stakeholder comments received from you by the AQD.



UNM stakeholder  
response 8-07....

08/17/2007

Albuquerque Environmental Health Department  
Air Quality Division (AQD)

Re: Regulatory and Policy Advisory Committee (RPAC) written responses to Stakeholders, concerning proposed amendments to the Albuquerque-Bernalillo County Air Quality Control Board Regulation 20.11.20 NMAC – Fugitive Dust Control (Part 20).

The current version of Part 20, implemented in March 2004, required that the board hold a public hearing regarding a decision on continuation or expiration of eight sources that had been given a three year exemption to Part 20. The status of the sources exempt for three years was to be considered after review of an emission inventory of the eight source types. On June 6, 2007, the AQD announced (through an electronic listserve of stakeholders previously involved with fugitive dust control) the availability of a draft of Part 20 amendments for review and comment. The request for written comments by stakeholders was to be received by close of business on 7/9/07. The following are the responses to stakeholders by the Part 20 subcommittee after review and discussion during the time period of 7/17/07 to 8/17/07.

The responses were sent by electronic mailing (email) to each of the stakeholders.

**The University of New Mexico  
Department of Safety and Risk Services (SRS)  
Vernon Hershberger, CHMM  
Environmental Health Manager**

COMMENTS & RECOMMENDATIONS

I have the following comments and recommendations regarding the 6/6/07 “Stakeholder Review Draft” of Fugitive Dust Control Regulation 20.11.20 NMAC. I have identified and addressed them section by section in the numerical order of the proposed new regulation as follows:

20.11.20.2.C.

Thank you for retaining the 6 conditional exemptions that allow low-impact quality of life activities (e.g., non-motorized trails) and land uses (e.g. agriculture, ranching). Please do not consider expanding the trail exemptions to include motorized trails since motorcycles, ATVs, etc., on unpaved trails do generate unhealthy dusty conditions on the trails and in surrounding areas.

**RPAC response: The current (Exempt for three years) and proposed amended Part 20**

**(Conditionally Exempt) do not apply to trails that allow for travel by motor vehicles.**

Thank you for removing the exemption for short publicly-accessible roads, even ones that serve 6 or less residences. For instance, despite serving far more than 6 residences and being longer than ¼ mile, Kitsch Rd. and Jon Kitch Rd., both Bernalillo County (B.C.) public unpaved roads in the East Mountain area, get lots of vehicular traffic and generate dust from folks that are simply lost when following the north frontage road along I-40 (North Zamora Road). In 2006, my neighbors & I submitted a formal project request to B.C. (with a Cc to Isreal Tavarez) to at least apply asphalt millings to control dust from these dusty unpaved B.C. public roads. To date, the B.C. Public Works Department still has not responded to our request nor complied with this regulation.

**RPAC response: Subsection C of 20.11.20.19 NMAC (PUBLIC AND PRIVATE UNPAVED**

**ROADWAYS, SHORT-CUTS AND UNPAVED PARKING AREAS) states that if the department receives a fugitive dust complaint regarding an unpaved public roadway, the department will forward the complaint to the governmental agency responsible for maintenance of a roadway. The responsible agency has 45 days to make a**

**reasonable effort to address the complaint and provide the department with a written report of the actions taken to resolve a complaint. Failure of the responsible agency to submit a timely report is a violation of Part 20.**

20.11.20.2.C.3

Please change “private” easements to “privately-owned” easements to be consistent with the 20.11.20.7.X definition.

**RPAC response: The department agrees that the change of “private” to “privately-owned” should be proposed for consistency.**

20.11.20.2.C.4

Please make sure that the publicly accessible unpaved roadways of all the several federal agencies listed are all regulated as currently worded. For instance, the Sandia District of Cibola National Forest has several publicly accessible unpaved roadways that are heavily used within Bernalillo County and they admittedly have had no Programmatic Fugitive Dust Control Permit or Plan to date.

**RPAC response: Current wording allows for an exemption to Part 20 if the unpaved roadways on forest service or park service lands are more than one quarter of a mile from an occupied residence. Unpaved roadways owned or controlled by the department of energy (DOE) or department of defense (DOD) are exempt, but only if the public does not have motor vehicle access to the roadways.**

**Proposed amendments for forest service, park service, DOE, and DOD lands would allow for classification as Conditionally Exempt only if the public does not have motor vehicle access to the roadways.**

20.11.20.7.U

Regarding the definition of “Paved” or “paving” or “paved roadway”, the AQD’s interpretation of recycled asphalt has been a very important for the University of New Mexico (UNM) regarding the surfacing of temporary parking lots. Application & maintenance of asphalt millings is much less expensive than other conventional paving methods, which is especially important for commissioning temporary parking lots. Dan Warren, the lead author of the original version of 20.11.20 NMAC, had always kindly interpreted recycled asphalt to include asphalt millings. Dan’s logic was asphalt millings compact well, don’t roll & grind like gravel (which makes more & new dust) and dust sticks its surfaces, so it was a sufficient surfacing for dust control in traffic areas. Since Dan has retired from the AQD, it would be good to formalize that interpretation by specifically listing “asphalt millings” in this definition. In UNM’s experience, asphalt millings have sufficiently controlled dust emissions. That is why I was also open to B.C. Public Works having that lower cost option for controlling dust on their Kitsch and Jon Kitch public roads around my private residence.

**RPAC response: The department staff have always interpreted “Paved” or “paving” or “paved roadway” to include the use of asphalt millings. Asphalt millings, when properly applied, have shown to be a very effective control measure. However, when utilized as a temporary or long term control measure, it has been found that unless routinely maintained the asphalt millings application may lose some of its control effectiveness. The department agrees to propose adding asphalt millings to this definition along with language requiring routine maintenance after initial application.**

20.11.20.7.Y

Since the means to comply with permits and regulations typically involve the commitment of financial resources, it may be wise to require the signature of a corporate officer, instead of managers, scientists, supervisors, etc.. Corporate officer signature is required for Authority-to-Construct and other Clean Air Act related permits, so why not with Fugitive Dust Control?

**RPAC response: The use of “managers, scientists, supervisors, etc.” in this definition applies to the department division managers, scientists, supervisors, etc. signature to activate (make effective) the programmatic permit.**

20.11.20.26

If the lecture section of the 40 CFR 60 Method 9 certification course is required for dust inspectors, why not also require the related field certification as well so that the inspector's readings can stand up in court?

**RPAC response:** The intent of the “visible fugitive dust detection method” as used for Part 20 purposes is to verify the presence of airborne particulate matter that can be detected by the human eye and also be an indicator of PM<sub>10</sub>. The visible fugitive dust observed is not related to a weighted, permitted emission limit or allowable percent opacity standard for the purpose of determining compliance. The “visible fugitive dust detection method” utilizes a time-related period to determine compliance by observing the effectiveness of short term or long term fugitive dust control measures. The department has determined that the inspector's readings required by 20.11.20.26 are a sufficient tool for the purpose of determining Part 20 violations.

20.11.20.26.G

Please change the last sentence to read “If the permittee or responsible person as identified in the permit fails to take all required actions, the owner or operator, if different, shall be promptly contacted by the department and take all actions required to prevent or satisfactorily resolve a violation of 20.11.20 NMAC, including stopping active operations, if necessary.”

**RPAC response:** (RPAC believes that the correct reference for this comment is 20.11.27G)

Part 20, and specifically the project owner signature information portion of the fugitive dust permit application is quite clear that the owner, if different from a responsible person or the permittee, is ultimately responsible for compliance with the provisions of Part 20. This especially applies, as noted, if there is failure to act to prevent or satisfactorily resolve a violation.

The department does not feel that the owner's responsibility to a project only becomes affective after the department informs the owner that a potential failure to act may be, or is, occurring. The department does feel that the owner's obligation to the project is to be aware of the activities, or lack thereof, of the person that the owner has designated to be the responsible person or persons or permittee to comply with the provisions of Part 20.

Therefore, the department does not agree that the suggested language should be proposed for this citation.