

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 11 ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
3 **PART 20 FUGITIVE DUST CONTROL**
4
5

6 **20.11.20.1 ISSUING AGENCY:** Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box
7 1293, Albuquerque, New Mexico 87103. Telephone: (505) ~~768-2600~~ 768-2601.
8 [20.11.20.1 NMAC - Rp, 20 NMAC 11.20.I.1, 3/1/04, 3/17/08]
9

10 **20.11.20.2 SCOPE:**

11 A. ~~[This part 20.11.20 NMAC is applicable to all sources of fugitive dust in Bernalillo county,~~
12 ~~[including paved and unpaved roadways, rights-of-ways and lots] unless otherwise exempt.~~

13 B. **Exempt:** ~~[This part 20.11.20 NMAC does not apply to sources within Bernalillo county that are:~~

14 (1) located on Indian lands over which the Albuquerque~~[/]~~ - Bernalillo county air quality control
15 board lacks jurisdiction; ~~[and]~~

16 (2) hard rock mining pits and operations contained within the mining pit and permitted pursuant to
17 the State of New Mexico Mining Act. For the purposes of ~~[this part 20.11.20 NMAC,~~ sand and gravel mining
18 operations are not ~~[exempted]~~ exempt; ~~[and]~~

19 (3) emergency maintenance operations that are intended to address an imminent threat to property or
20 persons. However, reasonably available control measures must be employed once the emergency has been
21 addressed, if appropriate, and a report of all activities shall be filed with the department no later than 10 days after
22 the incident has been concluded and the department shall determine if additional action, including a permit
23 application submittal, is required before ~~[further]~~ additional non-emergency activities occur at the site; and

24 (4) ~~[ongoing]~~ stationary source operations ~~[that require permits pursuant]~~ subject to 20.11.41 NMAC,
25 Authority to Construct, or 20.11.42 NMAC, Operating Permits, ~~[and]~~ that produce fugitive dust as defined in ~~[this~~
26 ~~part] 20.11.20 NMAC [are exempt from obtaining a fugitive dust control permit and paying fees due under this~~
27 ~~part], but only if the source of fugitive dust is addressed and controlled through permit conditions required by a~~
28 20.11.41 NMAC or 20.11.42 NMAC permit. ~~[all]~~ However construction at a stationary source site, whether it
29 involves new construction or a site modification, is subject to ~~[this part 20.11.20 NMAC.~~

30 C. ~~[Exempt for three years]~~ **Conditionally Exempt:** The following ~~[eight]~~ six sources of fugitive
31 dust emissions in Bernalillo county shall be conditionally exempt from the requirements of ~~[this part 20.11.20~~
32 NMAC, ~~[for three years from the effective date of this part. Before the three year exemption expires, the board shall~~
33 ~~hold a hearing that includes a review of an emissions inventory of the eight sources and other significant sources of~~
34 ~~fugitive dust in Bernalillo county and decide if the exemptions shall be continued. If one or more of the three year~~
35 ~~exemptions expire, the board shall also review the fugitive dust control fees to determine if they are adequate to~~
36 ~~support the fugitive dust control program.] unless the department determines that the fugitive dust emitted from a~~
37 conditionally exempt source's active operations or inactive disturbed surface area may adversely and significantly
38 affect human health within Bernalillo county:

39 (1) areas zoned for agriculture and used for growing a crop; ~~[and]~~

40 (2) bicycle trails, hiking paths~~[-]~~ and pedestrian paths, horse trails or similar paths used exclusively
41 for purposes other than travel by motor vehicles; ~~[and]~~

42 ~~[(3) unpaved roadways serving six residential dwellings or fewer; and~~

43 ~~(4) unpaved roadways less than one quarter mile in length that are not short cuts; and~~

44 ~~(5)](3) unpaved roadways on [private] privately-owned easements serving residential dwellings [uses~~
45 ~~that are in existence at the time this part becomes effective; and]~~

46 ~~[(6)](4) unpaved roadways on United States department of agriculture forest service lands or United~~
47 ~~States department of interior park service lands, if the roadways are more than one-quarter of a mile from an~~
48 ~~occupied residence; [and]~~

49 ~~[(7)](5) lots [occupied by dwellings used solely for residential purposes or solely for non-commercial~~
50 ~~livestock operations, smaller than three quarters of an acre, not including lots] smaller than three-quarters of an acre~~
51 ~~used for [other] any purposes; and~~

52 ~~[(8)](6) unpaved roadways within properties used for ranching [and] or [unpaved roadways within]~~
53 ~~properties owned or controlled by the United States department of energy or department of defense[-However], [this~~
54 ~~exemption only applies] if the public does not have motor vehicle access to the roadways.~~

55 [20.11.20.2 NMAC - Rp, 20 NMAC 11.20.I.2, 3/1/04, 3/17/08]
56

57 **20.11.20.3 STATUTORY AUTHORITY:** ~~[This part 20.11.20 NMAC is adopted pursuant to the authority~~
58 ~~provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality~~

1 Control Board Ordinance; Bernalillo county Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control
2 Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections ~~9-5-1-3 and~~ 9-5-1-4 and 9-5-1-5.
3 [20.11.20.3 NMAC - Rp, 20 NMAC 11.20.I.3, 3/1/04, 3/17/08]

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5 **20.11.20.4 DURATION:** Permanent.
6 [20.11.20.4 NMAC - Rp, 20 NMAC 11.20.I.4, 3/1/04]

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8 **20.11.20.5 EFFECTIVE DATE:** March 1, 2004, unless a later date is cited at the end of a section.
9 [20.11.20.5 NMAC - Rp, 20 NMAC 11.20.I.5, 3/1/04, 3/17/08]

10
11 **20.11.20.6 OBJECTIVE:** To ensure that ~~[all persons conducting]~~ every person shall ~~[active operations that~~
12 ~~result in disturbed surface areas or involve bulk material handling uses]~~ use reasonably available control measures or
13 other effective measures on an ongoing basis to prevent or abate ~~[injury to]~~ fugitive dust, if the fugitive dust may
14 with reasonable probability injure human health ~~[and]~~ or animal ~~[and]~~ or plant life ~~[and to prevent or abate~~
15 ~~unreasonable interference]~~ or as may unreasonably interfere with the public welfare, visibility ~~[and]~~ or the
16 reasonable use of property, as required by 20.11.20 NMAC.
17 [20.11.20.6 NMAC - Rp, 20 NMAC 11.20.I.6, 3/1/04, 3/17/08]

18
19 **20.11.20.7 DEFINITIONS:** In addition to the definitions in ~~[this section]~~ 20.11.20.7 NMAC, the definitions
20 in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in ~~[this part]~~
21 20.11.20.7 NMAC shall govern.

22 **A. “Active operations”** means any anthropogenic activity that is capable of generating, or generates
23 fugitive dust, including but not limited to: bulk material storage, handling or processing; earth moving; soil or
24 surface disturbance (e.g. discing, trenching, blading, scraping, clearing, grubbing, topsoil removal); construction,
25 renovation, or demolition activities; movement of motorized vehicles on any paved or unpaved roadway or surface,
26 right-of-way, lot or parking area; or the tracking out or transport of bulk material onto any paved or unpaved
27 roadway.

28 **B. “Anthropogenic”** means human-caused changes in the natural or built condition of the
29 environment.

30 **C. “Bulk material”** means sand, gravel, soil, aggregate or any other inorganic or organic solid
31 material capable of creating fugitive dust.

32 **D. “Business Day”** means Monday through Friday, except city of Albuquerque holidays.

33 ~~[D]E. “Construction activity”~~ means any activity preparatory to or related to building, altering,
34 rehabilitating, demolishing or improving property that results in a disturbed surface area, including but not limited to
35 grading, excavation, loading, crushing, pavement milling, cutting, clearing, grubbing, topsoil removal, blading,
36 shaping, dry sweeping, blasting and ground breaking.

37 ~~[E]E. “Crop”~~ means an agricultural plant harvested for consumption, utilization or sale.

38 ~~[F]G. “Disturbed surface area” or “surface disturbance”~~ means the natural or manmade area of the
39 earth’s surface that, as a result of anthropogenic activity, ~~[results in a release of fugitive dust or serves as]~~ may
40 become a source of transported material, track-out, or visible fugitive dust.

41 ~~[G]H. “Division”~~ means the city of Albuquerque air quality division or its successor agency.

42 ~~[H]I. “Dust suppressant”~~ means ~~water~~, hygroscopic materials, or non-toxic chemical stabilizers used
43 to reduce or control fugitive dust emissions during suspended operations and as a long term reasonably available
44 control measure.

45 ~~[I]J. “Earth moving activity”~~ means grading, cutting, filling, soil disturbance (e.g. discing, trenching,
46 blading, scraping, clearing, topsoil removal, grubbing), soil mulching, loading or unloading of dirt or other bulk
47 materials, including adding to or removing from open storage piles or stockpiles of bulk materials.

48 ~~[J]K. “Fugitive dust” or “dust”~~ means organic or inorganic particulate matter ~~[in quantities and of a~~
49 ~~duration that may with reasonable likelihood injure human or animal health or plant life, reduce safe visibility, cause~~
50 ~~property damage, or degrade visibility]~~. Water vapor, steam, or particulate matter emissions emanating from a duct
51 or stack of process equipment are not fugitive dust.

52 ~~[K]L. “Fugitive dust control construction permit” or “permit”~~ means a fugitive dust control permit
53 approved by the department and issued pursuant to ~~[this part]~~ 20.11.20 NMAC that contains an approved fugitive
54 dust control plan ~~[that allows the beginning of]~~ and authorizes active operations to begin when the permit is signed
55 by ~~[an authorized department representative]~~ a division manager, supervisor, scientist, field operations officer or
56 health specialist.

57 ~~[L]M. “Fugitive dust control plan” or “plan”~~ means the part or portion of the fugitive dust control
58 construction permit or programmatic permit application that details [any] the reasonably available control measures

1 and other effective measures the permit applicant commits to use to reduce the quantity of visible fugitive dust, ~~and~~
2 transported material, or track-out leaving the property or area under the control of the permittee ~~[in order to prevent~~
3 ~~a violation of the national ambient air quality standards (NAAQS) and to meet the objective of this part, including]~~
4 and shall include contingency fugitive dust control measures, ~~[that]~~ which shall be ~~[an applicable]~~ a requirement of
5 ~~[any]~~ every fugitive dust control permit.

6 **N.** **“Greenwaste”** means organic matter including, grass clippings, leaves, weeds, small shrub or tree
7 limb cuttings, brush, stumps, and soils.

8 **[M]O.** **“High wind event”** means a ~~[time period of five consecutive minutes with an average wind speed~~
9 ~~of 30 miles per hour (high wind event threshold level) or higher]~~ condition announced by the department consisting
10 of wind speeds of approximately 30 miles per hour or greater that, when accompanied by dry soil conditions, that is
11 likely to result in widespread reduced visibility due to blowing fugitive dust and that may result in elevated
12 monitored particulate levels that may cause or contribute to an exceedance or violation of the national ambient air
13 quality standards.

14 ~~[N.]~~ **“High wind event threshold level” or “threshold level”** means a five minute averaged wind
15 ~~speed level of 30 miles per hour or more that is used to determine a high wind event]~~

16 **[O]I.** **“Inactive disturbed surface area”** means any disturbed surface area on which active operations
17 have been suspended.

18 **[P]Q.** **“Large area disturbance”** means a project or development, totaling more than 25 acres upon
19 [including areas used for storage of bulk material, buildings or construction materials, machinery or vehicles for]
20 which active operations have been conducted [on more than 25 acres of total land area] and includes areas used for
21 storage of bulk material, building or construction materials, machinery or vehicles.

22 **[Q]R.** **“Open storage pile”** means the accumulation of ~~[any]~~ bulk material that is not fully enclosed,
23 covered or chemically stabilized.

24 **[R]S.** **“Owner or operator”** means ~~[any]~~ a person who owns, leases, operates, controls, or supervises a
25 source that directly or indirectly produces or is capable of producing fugitive dust.

26 **[S]T.** **“Parking lot” or “parking area”** means a location where motor vehicles routinely park whether
27 or not the area is zoned for parking ~~[or not].~~

28 **[F]U.** **“Paved” or “paving” or “paved roadway”** means asphalt, recycled asphalt, concrete or asphaltic
29 concrete, routinely-maintained asphalt millings, or combinations thereof, that covers a surface traveled or used by
30 motor vehicles.

31 **[U]V.** **“Permittee”** means ~~[any]~~ a person~~, owner or operator]~~ and all legal heirs, successors, and assigns
32 who has applied for and obtained ~~[an approved]~~ a fugitive dust control construction or programmatic permit issued
33 by the department [per this part] pursuant to 20.11.20 NMAC.

34 **[W]W.** **“Person”** means ~~[any]~~ an individual, firm, partnership, corporation, association, organization,
35 company, joint stock association, business trust, owner, or body politic, including, a municipality, local, state ~~[and]~~
36 or federal government agency or political subdivision, and ~~[shall include any]~~ includes an employee, officer,
37 operator, contractor, supplier, installer, user, leaseholder, trustee, receiver, assignee or other person acting in a
38 similar representative capacity with the authority to control transported material or emissions of particulate matter
39 generated at a disturbed surface area or generated by activities associated with a disturbed surface area or inactive
40 disturbed surface area.

41 **[W]X.** **“Privately-owned”** means real property that is not wholly or partially owned, leased or otherwise
42 controlled by a federal, state or local government or governmental agency or political subdivision.

43 **[X]Y.** **“Programmatic permit”** means a fugitive dust control permit valid for up to five years issued to
44 a permittee that performs routine maintenance or routine ongoing active operations on ~~[land or at facilities which]~~
45 real property, but does not include full depth reconstruction of a roadway or substantial removal and replacement of
46 a manmade facility. A programmatic permit shall include an approved fugitive dust control plan and shall be
47 effective when signed by a division manager, supervisor, scientist, field operations officer or health specialist.

48 **[Y]Z.** **“Property line”** means the exterior boundary of real property, as indicated by plats, plot maps or
49 other indication of ownership limits.

50 **[Z]AA.** **“Publicly-maintained”** means under the jurisdiction of, or maintained by ~~[any]~~ a federal, state, or
51 local government or governmental agency or political subdivision.

52 **[AA]BB.** **“Publicly-owned”** means real property that is wholly or partially owned, leased or
53 otherwise controlled by a federal, state or local government or governmental agency or political subdivision.
54 Publicly-owned ~~[and]~~ real property includes easements and rights-of-ways, streets, roadways, sidewalks, alleys and
55 other public ways, parks, irrigation and drainage facilities, and any other publicly controlled real property that can
56 be the source of fugitive dust.

57 **[BB]CC.** **“Reasonably available control measure” or “control measures”** means ~~[any]~~ a device,
58 system, process modification, apparatus, technique, work practice ~~[or control measure],~~ or combination thereof, that

1 mitigates fugitive dust and ~~may be included~~ includes the measures in ~~[this part]~~ 20.11.20.23 NMAC ~~[or]~~ and any
2 other regulatory control program that ~~affords~~ results in equivalent protection of a disturbed surface or inactive
3 disturbed surface area, whether or not the purpose of the control measure is to mitigate dust or to meet ~~[some other]~~
4 another requirement of ~~[this part]~~ 20.11.20 NMAC or any other statute or regulation. ~~[Any effective control~~
5 measures, including those in 20.11.20.23 NMAC may be used].

6 ~~[CC]DD.~~ **“Responsible person”** ~~[or “responsible official”]~~ means the person designated in a
7 fugitive dust control permit application or permit amendment who ~~[is]~~ agrees to be and shall be responsible for
8 complying with 20.11.20 NMAC, and with the permit, and plan ~~[and this part]~~ to the extent specified in the permit.

9 ~~[DD]EE.~~ **“Short cut”** means a non-dedicated roadway or route used by motor vehicle drivers to
10 save time by avoiding use of a dedicated and authorized roadway.

11 ~~[EE]FF.~~ **“Silt”** means ~~[any]~~ bulk material that passes through a 200-mesh screen using the
12 [ASTM C 126] ASTM-D 2487-93, “Classification of Soils for Engineering Purposes (United Soil Classification
13 System)” method, or most current ASTM (American society for testing and materials) method. Material that will
14 pass through a 200-mesh screen is 74 microns or less in size.

15 ~~[FF]GG.~~ **“Source” or “source of fugitive emissions”** means the origin of fugitive dust emissions.

16 ~~[GG]HH.~~ **“Stabilized” or “stabilization”** means ~~[the]~~ ongoing practices that are sufficient to
17 prevent ~~[a]~~ elevated monitored particulate levels that may cause or contribute to an exceedance or violation of the
18 national ambient air quality standards by meeting the objective established in [Section] 20.11.20.6 NMAC and the
19 requirements of the general provisions established in 20.11.20.12 NMAC ~~[of this part]~~.

20 **II.** **“Stockpile”** means the depositing of bulk material by mechanical means for the purpose of
21 creating a pile formation on top of an existing natural or man-made surface.

22 ~~[HH]JJ.~~ **“Stop work order”** means an order issued by the department pursuant to the provisions of ~~[this~~
23 ~~part requiring]~~ 20.11.20 NMAC that requires a person to cease active operations.

24 ~~[H]KK.~~ **“Track-out” or “tracking”** means bulk material deposited by a motor vehicle or vehicles upon
25 an unpaved or paved publicly or privately owned roadway ~~[and that]~~ if the bulk material can become airborne due to
26 mechanical or wind action.

27 **LL.** **“Transfer of Permit”** means an agreement approved in writing by the department that
28 meets the conditions outlined in subparagraphs (1) through (6) of paragraph D of 20.11.20.14 NMAC.

29 ~~[JJ]MM.~~ **“Transported material”** means particulate matter transported by wind, water or other
30 action that, once deposited, can become airborne due to mechanical or wind action.

31 ~~[KK]NN.~~ **“Unpaved roadway”** means ~~[any]~~ an unpaved route traveled by a motorized vehicle.

32 ~~[LL]OO.~~ **“Visible fugitive dust”** means ~~[anthropogenic]~~ airborne particulate matter ~~[emissions]~~
33 from a source, resulting in particulate matter emissions that can be detected by the human eye or a detection
34 [system] method approved by the department. Visible fugitive dust can be an indicator of PM10.

35 ~~[MM]PP.~~ **“Visible fugitive dust detection method”** means the method described in ~~[Section~~
36 20.11.20.25 of this part] 20.11.20.26 NMAC, which is one method used to determine compliance with ~~[this part]~~
37 20.11.20 NMAC.

38 [20.11.20.7 NMAC - Rp, 20 NMAC 11.20.I.7, 3/1/04, 3/17/08]

39
40 **20.11.20.8 VARIANCES:** ~~[Any]~~ A person may request a variance from ~~[this part]~~ 20.11.20 NMAC in
41 accordance with ~~[74-2-8 NMSA 1978, Variances]~~ the procedures established in 20.11.7 NMAC. ~~[The variancee~~
42 procedures of 20.11.7 NMAC shall not apply to this part].

43 [20.11.20.8 NMAC - Rp, 20 NMAC 11.20.I.8, 3/1/04, 3/17/08]

44
45 **20.11.20.9 SAVINGS CLAUSE:** ~~Any~~ amendment to Fugitive Dust Control, 20.11.20 NMAC, which is filed
46 with the state records center and archives shall not affect actions pending for violation of a city or county ordinance,
47 or prior versions of 20 NMAC 11.20 and 20.11.20 NMAC, *Airborne Particulate Matter*, 20.11.20 NMAC *Fugitive*
48 *Dust Control*, or a permit. Prosecution for a violation of a prior statute, ordinance, part or permit shall be governed
49 and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.
50 [20.11.20.9 NMAC - Rp, 20 NMAC 11.20.I.9, 3/1/04, 3/17/08]

51
52 **20.11.20.10 SEVERABILITY:** If any section, subsection, sentence, phrase, clause or wording of ~~[this part]~~
53 20.11.20 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional or
54 otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the
55 validity of remaining portions of ~~[this part]~~ 20.11.20 NMAC.

56 [20.11.20.10 NMAC - Rp, 20 NMAC 11.20.I.10, 3/1/04, 3/17/08]

1 **20.11.20.11 DOCUMENTS:** Documents incorporated and cited in [~~this part~~] 20.11.20 NMAC may be viewed
2 at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.
3 [20.10.20.11 NMAC - Rp, 20 NMAC 11.20.I.11, 3/1/04, 3/17/08]
4

5 **20.11.20.12 GENERAL PROVISIONS:**

6 **A.** Each person shall use reasonably available control measures or any other effective control
7 measure during active operations or on inactive disturbed surface areas, as necessary to prevent the release of
8 fugitive dust [a violation of the national ambient air quality standards and meet the objective established in
9 20.11.20.6 NMAC], whether or not the person [has been issued] is required by 20.11.20 NMAC to obtain a fugitive
10 dust control permit. [~~No person~~] It shall be a violation of 20.11.20 NMAC to allow fugitive dust, track out, or
11 transported material from any active operation, open storage pile, stockpile, paved or unpaved roadway [or]
12 disturbed surface area, or inactive disturbed surface area to cross or be carried beyond the property line, right-of-
13 way, easement or any other area under control of the person generating or allowing the fugitive dust if the fugitive
14 dust [will] may: (1) adversely affect the health, public welfare or safety of the residents of Bernalillo county; or (2)
15 impair visibility or the reasonable use of property; or (3) be visible longer than a total of 15 minutes in any one hour
16 observation period using the visible fugitive dust detection method in 20.11.20.26 NMAC or an equivalent method
17 approved in writing by the department. To mitigate fugitive dust, all inactive disturbed surface areas must be
18 stabilized and maintained in stable condition by the owner, operator, or person responsible for maintenance of the
19 disturbed surface. Failure to comply with this subsection shall be a violation of this part.]

20 (1) with reasonable probability injure human health or animal or plant life;
21 (2) unreasonably interfere with the public welfare, visibility or the reasonable use of property; or
22 (3) be visible for a total of 15 minutes or more during any consecutive one hour observation period
23 using the visible fugitive dust detection method in 20.11.20.26 NMAC or an equivalent method approved in writing
24 by the department.

25 **B.** Failure to comply with 20.11.20.12 NMAC, a fugitive dust control permit, plan, term or condition
26 shall be a violation of [~~this part~~] 20.11.20 NMAC.

27 **C.** [~~The department may be asked to document and provide any evidence of the alleged property~~
28 ~~damage caused by fugitive dust and the department may make such documentation available to all parties involved~~
29 ~~in a property damage dispute. Prior to issuing a permit authorizing commencement of active operations, the~~
30 ~~department shall document the conditions of the properties that are closest to the property subject to the permit and~~
31 ~~any other properties the department believes are appropriate. The documentation may be in the form of photographs~~
32 ~~in electronic or hard copy formats or video recordings. The documentation will be maintained by the department for~~
33 ~~one year after completion of the permitted project. A condition of any permit issued shall be a requirement to~~
34 ~~remedy damage to real properties caused by a violation of the permit.]~~

35 Prior to issuing a fugitive dust control construction permit authorizing commencement of active operations, the
36 department shall:

37 (1) document, in the form of photographs in electronic or hard copy formats or video recordings, the
38 conditions of the properties that are closest to the property subject to the permit and any other properties the
39 department believes are appropriate;

40 (2) maintain the documentation for one year after completion of the permitted project;

41 (3) include in the permit a requirement that the permittee remedy damage to real properties caused by
42 a violation of the permit; and

43 (4) make the documentation available as evidence, upon request, to all parties involved in a property
44 damage dispute allegedly caused by fugitive dust.

45 **D.** A [~~person~~] permittee whose violation of [~~this part~~] 20.11.20 NMAC results in fugitive dust being
46 deposited upon [~~land~~] real property beyond the limits of the permitted area shall take all actions necessary to remedy
47 damage caused by a violation proven with credible evidence. Such remedies may include, but not be limited to,
48 compensation, removal of the fugitive dust and/or repair of any damage after obtaining permission from property
49 owners or operators before doing any remedial work on the damaged property. It shall be a separate violation of
50 [~~this part~~] 20.11.20 NMAC to fail to remove the fugitive dust and repair the damage as specified in [~~the~~] a written
51 schedule or any extension agreed to by the [~~person~~] permittee and the owner of the damaged property [~~owner~~]. If
52 the parties cannot agree to a schedule, the department may establish deadlines and failure to comply with the
53 deadlines shall be a separate violation of [~~this part~~] 20.11.20 NMAC. No violation will occur if the failure to
54 perform the corrective action is for reasons beyond the control of the person performing the work including without
55 limitation acts of God or government preemption in connection with a national emergency or if the owner of the
56 allegedly damaged property [owner] refuses to grant reasonable permission and access to conduct the remediation
57 activities.

1 E. ~~[Reserved.]~~ Stockpiles shall be no higher than 15 feet above the existing natural or man-made
2 grade that abuts the stockpile, unless otherwise approved in advance and in writing by the department.

3 F. Each person ~~must~~ shall comply with all applicable provisions of the Clean Air Act, the New
4 Mexico Air Quality Control Act, joint air quality control board ordinances, regulations of the board, and permits
5 issued by the department.

6 [20.11.20.12 NMAC - Rp, 20 NMAC 11.20.II.1, 3/1/04, 3/17/08]

7
8 **20.11.20.13 [EXISTING SURFACE DISTURBANCE AREAS; FUGITIVE DUST CONTROL**
9 **PLANS/PERMIT REQUIRED:] FUGITIVE DUST CONTROL PROGRAMMATIC PERMITS:**

10 ~~[A. — Surface disturbance/demolition permits valid at the time this replacement Part 20 became effective~~
11 ~~shall remain in effect until the earlier of the expiration date of the surface disturbance/demolition permit or sign-off~~
12 ~~of the surface disturbance/demolition permit by the department as “project complete.” Any renewals, extensions or~~
13 ~~modifications of existing permits that involve expansion of the disturbed area or modification of the approved plan~~
14 ~~covered by the existing permit shall comply with the requirements of Part 20, Fugitive Dust Control, including but~~
15 ~~not limited to payment of the fees required by this part.~~

16 ~~B. — Any person responsible for sloped (i.e. slopes having a steepness of three to one or steeper) and~~
17 ~~bottom portions of interior and riverside drains and canals used for irrigation purposes, and arroyos and public flood~~
18 ~~control facilities subject to routine maintenance or repair, sedimentation and water erosion shall apply for a variance,~~
19 ~~a programmatic permit as authorized by Subsection C of 20.11.20.13 NMAC below, or a large scale interim status~~
20 ~~permit set out in Subsection D of 20.11.20.13 NMAC below if the person does not elect to file an application and~~
21 ~~obtain a new disturbance area permit under 20.11.20.14 NMAC.~~

22 ~~C. — Programmatic permits covering ongoing routine maintenance of any facilities that exist on the~~
23 ~~effective date of this part at single or multiple locations may be approved by the department. Programmatic permits~~
24 ~~are issued to address work activities that result in similar earth moving or surface disturbance activities and utilize~~
25 ~~similar fugitive dust abatement strategies. Programmatic permits are valid for up to five years and permittee shall~~
26 ~~pay an annual fee for each year covered by the programmatic permit. Receipt by the department of the annual fees~~
27 ~~shall result in an automatic renewal of the programmatic permit. A new permit application shall be required every~~
28 ~~five years or earlier if the surface disturbance activities or fugitive dust abatement strategies are modified.~~
29 ~~Programmatic permits shall follow the processing requirements of Subsection C or D of 20.11.20.14 NMAC of this~~
30 ~~part below, as appropriate.~~

31 ~~D. — Large scale interim status permits shall automatically be granted to all persons who are responsible~~
32 ~~for, in control of, or have a right of entry pursuant to an easement, permit, license, or right of way for 100 miles or~~
33 ~~more of unpaved roadways or easements on the effective date of this part and who file a declaration of eligibility~~
34 ~~within six months of the effective date of this part. A person may withdraw the declaration at any time and terminate~~
35 ~~all responsibilities under Subsection D of 20.11.20.13 NMAC. If a declaration is withdrawn, the person withdrawing~~
36 ~~the declaration shall comply with all other applicable requirements of 20.11.20 NMAC. The person issued a large~~
37 ~~scale interim status permit shall not be subject to enforcement under this part if the person has filed a declaration of~~
38 ~~eligibility consistent with this section and, within 90 days of filing the declaration, has paid the applicable~~
39 ~~programmatic permit fee required by 20.11.2.15 NMAC. The declaration shall include an agreement to the~~
40 ~~following conditions:~~

41 ~~_____ (1) within one year of the effective date of this part, the person shall undertake an inventory of all~~
42 ~~unpaved roadways and easements and shall submit that report the department and the board;~~

43 ~~_____ (2) within two years of the effective date of this part, the person shall develop a compliance plan~~
44 ~~with the written approval of the department that sets out a strategy (hereafter “compliance plan”) to permanently~~
45 ~~stabilize the existing unpaved roadways and easements using any reasonably available control measures identified in~~
46 ~~this part or any other effective control measure that is required under any other statute or regulation, or any other~~
47 ~~effective control measure devised by the person responsible for these disturbed surfaces;~~

48 ~~_____ (3) the compliance plan shall set out a mandatory schedule for permanent stabilization of existing~~
49 ~~unpaved roads and easements, which shall be completed within no more than 10 years from the effective date of this~~
50 ~~part;~~

51 ~~_____ (4) annual progress reports regarding implementation of the compliance plan shall be submitted to~~
52 ~~the department and the board documenting the actions taken, due diligence to pursue actions, delays, and~~
53 ~~explanations of any missed deadlines;~~

54 ~~_____ (5) the compliance plan shall be updated annually, and extensions to the approved schedule may~~
55 ~~be approved by the department. Extensions shall only be granted for a two year period and only upon a showing of~~
56 ~~diligent action to achieve compliance; each two year extension must be applied for separately and only the amount~~
57 ~~of time necessary to achieve compliance shall be approved by the department if less than a two-year period is~~

1 required to achieve a mandatory deadline; the department shall grant only three two-year extensions. The board may
2 only grant additional extensions upon a request and public hearing before the board;

3 ~~_____ (6) if the person fails to comply with this section or upon review of the annual reports and
4 compliance plan updates, the department determines that the person has failed to achieve a reasonable rate of
5 progress based upon diligent actions, the enforcement provisions of 20.11.20.27 NMAC shall be pursued until
6 reasonable corrective actions are developed to address the failure; if the department accepts the corrective actions a
7 new compliance plan shall be approved by department; and a copy of the new compliance plan and full report shall
8 be made to the board.]~~

9 A. A fugitive dust control programmatic permit is required for single or multiple facility locations to
10 address real property totaling three-quarters of an acre or more that is subject to routine maintenance, routine surface
11 disturbance activities, or routine ongoing active operations. A programmatic permit application and fugitive dust
12 control plan shall be submitted on forms provided by the department. Programmatic permits are valid for up to five
13 years. The permittee shall pay the annual programmatic permit fee required by 20.11.2 NMAC, Fees, for each year
14 covered by the programmatic permit. Receipt of the annual fee by the department shall result in an automatic annual
15 renewal of the programmatic permit. A new programmatic permit application and fugitive dust control plan shall be
16 submitted every five years or sooner if the surface disturbance activities or fugitive dust abatement strategies are
17 modified. A filing and review fee is not required for a programmatic permit.

18 B. A person responsible for sloped (i.e. slopes having a steepness of three-to-one or steeper) and
19 bottom portions of interior and riverside drains and canals used for irrigation purposes, and arroyos and public flood
20 control facilities subject to routine maintenance or repair, sedimentation and water erosion shall obtain either a
21 variance as provided by 20.11.7 NMAC or a programmatic permit as provided by Subsection A of 20.11.20.13
22 NMAC if the person does not elect to submit an application and obtain a fugitive dust control construction permit
23 pursuant to 20.11.20.14 NMAC.

24 ~~[E]C.~~ No signs or photographic documentation shall be required for the permits or activities ~~[covered in
25 Section]~~ subject to 20.11.20.13 NMAC. Appropriate permit application documentation shall be determined by the
26 department.

27 [20.11.20.13 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

28
29 **20.11.20.14 [NEW SURFACE DISTURBANCE AREAS; FUGITIVE DUST CONTROL PLANS;
30 PERMITS REQUIRED:] FUGITIVE DUST CONTROL CONSTRUCTION PERMITS:**

31 A. [Any] A person who does not elect to obtain [a fugitive dust control permit pursuant to Section
32 20.11.20.13 NMAC] or who does not qualify for a fugitive dust control programmatic permit ~~[under]~~ pursuant to
33 [Section] 20.11.20.13 NMAC and who plans to conduct ~~[new]~~ active operations that will disturb three-quarters of an
34 acre or more ~~must shall~~ comply with either Subsection ~~[C or D of 20.11.20.14 NMAC]~~ A or B of 20.11.20. 18
35 NMAC and obtain a fugitive dust control construction permit. [Any person may voluntarily apply and pay for a
36 permit pursuant to Subsections C and D of 20.11.20.14 NMAC and shall comply with the requirements of the permit
37 and this part. The application shall include a fugitive dust control plan that may utilize reasonably available control
38 measures to mitigate fugitive dust to meet the objectives of this part.] No active operations shall commence until
39 [an authorized] a department [representative] manager, supervisor, scientist, field operations officer or health
40 specialist signs the fugitive dust control construction permit (permit) and a copy of the signed permit is available at
41 the site of active operations. [The] A permit shall consist of [the approved] a complete permit application [form,
42 the] a fugitive dust control plan, any appended documents, [and] any conditions attached to the permit by the
43 department, and a signature and effective date affixed by a department manager, supervisor, scientist, field
44 operations officer or health specialist.

45 B. The permittee shall [be responsible for complying] comply with the terms of [a] the permit unless
46 the department approves a transfer of the permit or issues a new permit for the active or inactive disturbed surface
47 area of operation to a new permittee. [In addition, the department may approve, in writing, an amendment to any
48 permit that adds or changes the designated responsible person who has agreed in writing to be responsible for
49 complying with the permit, to the extent specified in the permit. If the permittee fails to comply with the provisions
50 of this part, the owner or operator, if different from the responsible person or permittee, shall be responsible for
51 compliance with the permit.] If [a portion] three-quarters of an acre or more of the [active operations] real property
52 that is subject to the permit is [legally] transferred or sold [as a single occupancy residence lot,] the new owner [of
53 that lot] is responsible for [compliance] complying with [this part] either 20.11.20.13 NMAC or 20.11.20.14 NMAC
54 unless exempt. Upon receipt of an amended permit signed by a department manager, supervisor, scientist, field
55 operations officer or health specialist, [and] the permittee [is] who transferred or sold the real property no longer will
56 be responsible for control of fugitive dust originating from the [residential lot] real property that has been transferred
57 or sold. Permit amendment fees shall be paid as required by 20.11.20.14 NMAC.

1 C. ~~[Any person who plans to conduct active operations that will disturb at least three quarters of an~~
2 ~~acre, or 32,670 square feet, but no greater than 25 acres of total land surface shall submit a fugitive dust control~~
3 ~~permit and fugitive dust control plan application to the department no fewer than 10 working days before beginning~~
4 ~~active operations. If different from the permittee] If a person other than the permittee will be responsible for~~
5 ~~complying with the permit and 20.11.20 NMAC, then the permittee shall designate [a] the responsible person or~~
6 ~~persons [for] in the permit application [and the activities] who shall be responsible for active operations and inactive~~
7 ~~disturbed surface areas to the extent specified in the application. Before a responsible [party] person [may] shall be~~
8 ~~liable for [violations] a violation of the permit or [this part] 20.11.20 NMAC, the responsible person must shall~~
9 ~~agree in writing to accept responsibility for compliance with the permit [and this part and] conditions. The~~
10 ~~responsible person shall be the first person [contacted by] the department [to resolve] attempts to contact regarding a~~
11 ~~violation of the permit or [this part] 20.11.20 NMAC. In addition, the department may approve, in writing, a permit~~
12 ~~amendment that adds or changes the responsible person who has agreed in writing to be responsible for complying~~
13 ~~with the permit and plan, to the extent specified in the permit. If the responsible person and permittee fail to comply~~
14 ~~with the provisions of 20.11.20 NMAC, the owner or operator, if different from the responsible person or permittee,~~
15 ~~shall be responsible for compliance with the permit.~~

16 ~~**D.**—Any person who plans to conduct active operations that will disturb more than 25 acres of total~~
17 ~~land surface shall submit a fugitive dust control permit application to the department regarding the proposed activity~~
18 ~~no fewer than 20 working days before beginning active operations. If different from the permittee, the permittee~~
19 ~~shall designate a responsible person for the permit application and the activities. Before a responsible party may be~~
20 ~~liable for violations of the permit or this part, the responsible person must agree in writing to accept responsibility~~
21 ~~for compliance with the permit and this part and shall be the first person contacted by the department to resolve a~~
22 ~~violation of the permit or this part.~~

23 ~~**E.**—A fugitive dust control permit application shall be submitted to the department by using permit~~
24 ~~application forms provided by the department along with any applicable fee. However, the fugitive dust control plan~~
25 ~~may be in any form including duplicates of programs to comply with any other statute or regulation so long as the~~
26 ~~plan provides reasonably available control measures whose purpose is to mitigate fugitive dust and meet the~~
27 ~~objectives of this part. If the plan does not specifically enumerate the control measures proposed to mitigate fugitive~~
28 ~~dust, the permit application shall be deemed incomplete. Permit applications shall be rejected if incomplete. If an~~
29 ~~incomplete application is rejected, a new application may be filed and all time limits within this part shall apply as if~~
30 ~~the initial application had not been filed.~~

31 ~~**F.**—When the complete permit application and fee are delivered to the department, the department~~
32 ~~shall have 10 working days to review the permit application if the area to be permitted is at least three quarters of an~~
33 ~~acre but no greater than 25 acres, or the department shall have 20 working days to review the proposed permit if the~~
34 ~~area to be permitted is greater than 25 acres. If all requirements of this part are met, the department shall issue a~~
35 ~~permit to the permittee, which shall authorize commencement of active operations. If the department has not~~
36 ~~approved, denied, or notified the permittee of permit application deficiencies within 30 working days, the permit~~
37 ~~shall be automatically approved and operations may commence.~~

38 ~~**G]****D.** An approved [fugitive dust control] permit shall be valid for one year from the date of [approval]~~
39 ~~issuance by the department or until the project expiration date provided in the permit application, whichever is~~
40 ~~longer, but no more than five years from the date of issuance. If the project plan, expiration date, [the] total~~
41 ~~disturbed [area(s)] surface area, completion date or the proposed control measures change in any manner, [a] an~~
42 ~~amended or new permit [shall be] is required. At least 10 business days [prior to] before the expiration date, [all] a~~
43 ~~fugitive dust control [permits] permit must shall be renewed by the then-current permittee, or the permit shall expire~~
44 ~~as of the expiration date. Permit amendment or renewal fees [and programmatic permit fees shall be as described in~~
45 ~~20.11.2 NMAC] shall be paid as required by Subsection H of 20.11.20.14 NMAC. [Fugitive dust control] Permits~~
46 ~~may be transferred to legal heirs, successors, and assigns, who shall become the new permittee. Permit transfers~~
47 ~~may [be made] qualify as an administrative amendment [provided that] if: [a copy of a written agreement between~~
48 ~~the current and new permittee, containing a specific date of transfer of permit responsibility, coverage, and liability,~~
49 ~~has been submitted to the department, and either the department has determined that no change to the permit other~~
50 ~~than the administrative change is necessary, or changes to the permit deemed necessary by the department have been~~
51 ~~made, the new owners have submitted the application information required in Section 20.11.20.15 NMAC of this~~
52 ~~part, and no grounds exist for permit termination, as otherwise provided by this part.]~~

53 ~~(1) the department has received, on a form provided by the department, a written transfer agreement~~
54 ~~signed by the current and new permittee, and, if different than the new permittee, by the owner of the real property~~
55 ~~subject to the permit;~~

56 ~~(2) a specific date of the transfer of the permit and plan responsibility, coverage, and liability is~~
57 ~~established in the transfer agreement;~~

1 (3) the department has determined that no change to the permit and plan other than the administrative
2 change is necessary;

3 (4) the new permittee and owner have submitted the application information required by 20.11.20.15
4 NMAC if changes have been made to the permit and plan as deemed necessary by the department;

5 (5) no grounds exist for permit termination, as otherwise provided by 20.11.20 NMAC; and

6 (6) the transfer agreement has been approved in writing by the department.

7 **H.** By accepting a permit, the permittee agrees to take all actions required by the fugitive dust control
8 permit issued by the department to prevent a violation of this part, including stopping active operations, if necessary.
9 If the permittee fails to take all required actions, the owner or operator or designated responsible person, if different,
10 shall be responsible to take all actions required to prevent or satisfactorily resolve a violation of this part, including
11 stopping active operations, if necessary.

12 **I.** By issuing a stop work order, the department may suspend, and/or may initiate revocation of any
13 permit issued by the department if the permittee fails to implement the reasonably available control measures
14 established in the fugitive dust control permit.

15 **J.** By issuing a stop work order, the department may require any person to stop all active operations
16 at a site if that person fails to obtain a permit as required by this part.

17 **K.** For all projects with a valid permit for a total of 10 acres or more] **E.** After a permit is issued
18 and before the start of active operations, the permittee shall install and maintain a project sign provided by the
19 department or [that they provide] a project sign that meets the requirement of [this part] 20.11.20.14 NMAC. The
20 department will establish uniform design guidelines for the sign to ensure that the sign is reasonably legible to the
21 public. If the required information is provided in an existing project sign that has been established for [any other]
22 another purpose, an additional sign shall not be required to comply with [this part] 20.11.20 NMAC. At a minimum,
23 the sign shall contain the following:

- 24 (1) project name; [~~and~~]
- 25 (2) permittee name; [~~and~~]
- 26 (3) phone number of designated responsible person or owner; [~~and~~]
- 27 (4) subcontractor name (optional); [~~and~~]
- 28 (5) subcontractor phone number (optional); [~~and~~]
- 29 (6) air quality division phone number; [~~and~~]
- 30 (7) fugitive dust control permit number; and
- 31 (8) [~~project acreage~~] total acres of area to be disturbed.

32 **F.** The permittee or responsible person shall make the permit available to all employees, agents, sub-
33 contractors, and other persons performing work in the area of active operations or inactive disturbed surface areas to
34 assist in maintaining compliance with 20.11.20 NMAC. The permittee or responsible person shall explain the
35 requirements of the permit to appropriate employees, contractors and agents working at the site. Upon request, the
36 permittee shall provide information regarding how to obtain a copy of the permit from the department.

37 **G.** It is the responsibility of the permittee or responsible person to ensure that the permit or amended
38 permit contains current contact information and that a copy is maintained at the work site and is provided to the
39 department upon request. Failure to maintain and provide up-to-date contact information shall be a violation of
40 20.11.20 NMAC.

41 **H.** The department may amend or renew the permit if requested to do so by the permittee. No fee
42 shall be charged for amending or renewing a permit, unless there will be an increase in the number of acres subject
43 to surface disturbance. Both the department and the permittee must sign an amended permit before it will be
44 effective. The department is not required to sign a renewed permit unless the renewed permit increases the number
45 of acres subject to surface disturbance. An amended or renewed permit that involves an increase in the number of
46 acres subject to surface disturbance shall require payment of fees as required by 20.11.2 NMAC.

47 [20.11.20.14 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

48
49 **20.11.20.15 FUGITIVE DUST CONTROL CONSTRUCTION PERMITS; MINIMUM PERMIT**
50 **APPLICATION REQUIREMENTS:** Proposed fugitive dust control construction permit applications shall be
51 submitted on forms provided by the department. Fugitive dust control plans may be submitted in any format
52 including [~~duplicates~~] a copy of a programs [~~required to comply~~] that complies with any other statutes or regulations
53 so long as [~~they conform to the information requirements of this part~~] the plan provides reasonably available control
54 measures whose purpose is to mitigate fugitive dust and the plan meets the objectives of 20.11.20 NMAC. If
55 extraneous information is supplied that does not apply to mitigation of fugitive dust [~~control~~], then the dust control
56 measures shall be clearly identified in the plan or the permit application shall be deemed incomplete and shall be
57 rejected. An incomplete permit application shall be processed as described in Subsection C of 20.11.20.18 NMAC.
58 Proposed fugitive dust control permit applications shall include the following:

- 1 A. ~~[permittee]~~ name, address, telephone number and fax number ~~of permittee~~; ~~[and]~~
- 2 B. owner's name, address, telephone number and fax number if different from permittee; ~~[and]~~
- 3 C. ~~[operator's name, address, telephone number and fax number if different from Permittee; and]~~
- 4 ~~D.~~]if different than the permittee, the name, address, telephone number and fax number of the
- 5 responsible person ~~[or official designated in writing on the permit]~~ who is agreeing to, and shall be responsible for
- 6 activities ~~[on site]~~ on the permitted site. The department shall first attempt to contact the responsible person ~~[or~~
- 7 ~~official to resolve]~~ regarding a violation of ~~[this part]~~ the permit; ~~[and]~~
- 8 ~~[E]~~D. anticipated project start date which ~~must~~ shall be ~~[not]~~ no fewer than 10 ~~[working]~~ business days
- 9 from the department's receipt of the permit application for areas containing greater than three quarters of an acre but
- 10 no greater than 25 acres, ~~[not]~~ and no fewer than 20 ~~[working]~~ business days from the department's receipt of the
- 11 permit application for areas containing more than 25 acres; ~~[and]~~
- 12 ~~[F]~~E. anticipated project ~~[and]~~ completion date; ~~[and]~~
- 13 ~~[G]~~F. project description; ~~[and]~~
- 14 ~~[H.~~ project location, including:
- 15 (1) ~~street address, if available; and~~
- 16 (2) ~~universal property code, latitude and longitude or universal transverse mercator (UTM)~~
- 17 ~~coordinates, if reasonably available; and]~~
- 18 ~~G.~~ project location including, if available, street address, major cross streets or nearby intersection;
- 19 ~~[I]~~H. total area of disturbance in acres or square feet; ~~[and]~~
- 20 ~~[J]~~I. a check or money order for the ~~[resulting]~~ fees due, ~~[and how they were]~~ calculated using the
- 21 tables provided on the permit application form, payable to the 'city of Albuquerque permits program' (fund 242);
- 22 ~~[and]~~
- 23 ~~[K]~~J. a description of the sequencing of the active operations, if phasing is used to reduce the ~~[per-acre~~
- 24 ~~fees due]~~ total disturbed area at any time; ~~[and]~~
- 25 ~~[L]~~K. estimated total volume of bulk material being handled ~~[(e.g. cubic yards)]~~ in cubic yards,
- 26 including any bulk material being imported, exported or relocated; ~~[and]~~
- 27 ~~[M]~~L. location from which bulk material is being imported to the site and a statement regarding whether
- 28 the site where the imported material originates will have a separate fugitive dust control permit, or provide written
- 29 information to the department as soon as known; ~~[and]~~
- 30 ~~[N]~~M. location to which bulk material from the site is being exported and a statement regarding whether
- 31 the site to which the material is to be exported will have a separate fugitive dust control permit, or provide written
- 32 information to the department as soon as known; ~~[and]~~
- 33 ~~[O]~~N. whether an approved drainage plan exists pursuant to city of Albuquerque or Bernalillo county
- 34 ordinances and, upon request by the department, provide a copy of the drainage plan; ~~[and]~~
- 35 ~~[P]~~O. site map (e.g. zone atlas page, aerial photograph); ~~[and]~~
- 36 ~~[Q]~~P. type of work being performed and appropriate reasonably available control measures, as described
- 37 in 20.11.20.23 NMAC, or other effective control measures proposed to be used in the fugitive dust control plan ~~[(see~~
- 38 Section 20.11.20.23 NMAC); and]
- 39 ~~[R]~~Q. a statement that effective contingency fugitive dust control measures shall be taken by the
- 40 permittee if the control measures ~~[in Subsection Q]~~ required by Subsection P of 20.11.20.15 NMAC are not
- 41 effective in maintaining compliance with ~~[this part]~~ 20.11.20 NMAC; ~~[and]~~
- 42 ~~[S]~~R. a commitment to comply with provisions of Subsection B of 20.11.20.16 NMAC if the permittee
- 43 chooses to preserve the ability to qualify for a high wind affirmative defense; ~~[and]~~
- 44 ~~[T]~~S. high wind contingency measures that will be implemented when high winds occur; ~~[and]~~
- 45 ~~[U]~~T. a description of the actions the permittee will take to mitigate damage caused by fugitive dust if
- 46 generated by active operations or an inactive disturbed surface area on the permitted site; ~~[and]~~
- 47 ~~[V]~~U. other proposed conditions ~~[agreed to by the owner or operator and the department; and]~~
- 48 ~~[W]~~V. ~~[signatures]~~ signature of the permittee, and, if a different person, ~~[signatures]~~ signature of the
- 49 owner, operator and/or any ~~[designated]~~ responsible person ~~[or official]~~ certifying that the information in the
- 50 fugitive dust control permit application is true, accurate and complete, and certifying that ~~[the]~~ all actions necessary
- 51 to comply with ~~[this part]~~ 20.11.20 NMAC will be taken, including suspending active operations if necessary to
- 52 comply with the provisions of ~~[this part]~~ 20.11.20 NMAC; ~~[and]~~
- 53 W. a statement regarding whether bulk material will be stockpiled at the project site, the dimension of
- 54 each stockpile, and the reasonably available control measures or other effective control measures that will be used at
- 55 the stockpile area to comply with 20.11.20 NMAC.

56 [20.11.20.15 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

57

1 **20.11.20.16 HIGH WIND EVENT REQUIREMENTS; HIGH WIND EVENT AFFIRMATIVE**
2 **DEFENSE:**

3 **A. General requirements:** ~~[A high wind event is a time period of five consecutive minutes with an~~
4 ~~average wind speed of 30 miles per hour (high wind event threshold level) or higher.]~~ During a high wind event, all
5 persons responsible for fugitive dust control activities on publicly or privately-owned real property ~~[who own or~~
6 ~~operate a fugitive dust source]~~ where active operations ~~[have occurred or]~~ are occurring or inactive disturbed surface
7 areas exist ~~must shall~~ use reasonably available control measures or other effective measures to prevent fugitive dust
8 from leaving the ~~[source] property [and]~~ All such persons shall implement the control measure ~~[is]~~ required by
9 Paragraph (5) of Subsection C, of ~~[this section]~~ 20.11.20.16 NMAC.

10 **B. High wind affirmative defense:** If the department initiates an administrative enforcement action
11 against either a permittee or a ~~[designated]~~ responsible person, or both (respondent) alleging a violation of a permit
12 or ~~[this part]~~ 20.11.20 NMAC during a high wind event, the respondent may assert an affirmative defense in the
13 enforcement action if the respondent establishes by credible evidence that respondent complied with the
14 requirements established in Subsection C of 20.11.20.16 NMAC ~~[below]~~. In order to successfully assert the
15 affirmative defense, during the entire duration of a permit the respondent shall utilize the applicable controls
16 described in Subsection C of 20.11.20.16 NMAC ~~[below]~~, regardless of whether or not a high wind event exists,
17 with the exception of Paragraph (5) of Subsection C of 20.11.20.16 NMAC ~~[below]~~, which ~~[applies only]~~ shall be
18 required during a high wind event. The affirmative defense shall not be available if respondent has failed to
19 diligently perform the control measures specified in Paragraphs (1) through (5) of Subsection C of 20.11.20.16
20 NMAC. The availability of the affirmative defense shall not change the respondent's potential liability for any
21 damage caused by fugitive dust leaving the permitted property, and the affirmative defense shall not change the
22 permittee's obligation to remove fugitive dust originating from the permitted source, or otherwise remedy the
23 damage, as required by Subsection D of 20.11.20.12 NMAC. The board, its members, and employees and officials
24 of the city of Albuquerque and the county of Bernalillo shall not incur individual liability for damage to persons or
25 property caused by fugitive dust leaving the permitted property.

26 **C. Mandatory control measures:** To assert a high wind event affirmative defense as described in
27 Subsection B of 20.11.20.16 NMAC ~~[above]~~, a permittee ~~[must]~~ shall utilize the applicable control measures in
28 Paragraphs (1) and (2) of Subsection C of 20.11.20.16 NMAC on an ongoing basis. Without prior notice to the
29 department, the permittee may use the measure in Paragraph (3) of Subsection C of 20.11.20.16 NMAC in place of
30 the measure in Paragraph (1) of Subsection C of 20.11.20.16 NMAC. After receiving written permission from the
31 department, the permittee may substitute the measures in Paragraph (4) for the measures in Paragraphs (1), (2),
32 and/or (3) of Subsection C of 20.11.20.16 NMAC. All permittees, whether or not they intend to assert a high wind
33 affirmative defense, shall implement the measure in Paragraph (5) of Subsection C of 20.11.20.16 NMAC; during a
34 high wind event. ~~[The mandatory control measures are described in Paragraphs (1) through (5) of this Subsection.]~~

35 (1) ~~[Use of wet suppression sufficient to provide and maintain a soil moisture content of not less than~~
36 ~~twelve percent, as used for purposes of determining the optimal compaction rating of the soil. To determine the~~
37 ~~moisture content, first, scrape away the top one half to one inch of the soil. The soil sample shall be taken from the~~
38 ~~freshly scraped area. Soil moisture shall be determined by firmly squeezing by a small handful of sample soil to~~
39 ~~make an irregular shaped ball of soil. Upon observing the ball and the hand, there shall be credible evidence of the~~
40 ~~soil binding together with the ball retaining shape due to moisture in the soil. The ball may exhibit some cracking,~~
41 ~~but shall not collapse due to low moisture content when the hand is opened. The respondent or the department shall~~
42 ~~test samples obtained from a minimum of three separate representative locations on the permitted property. To~~
43 ~~demonstrate compliance, at least two thirds of the samples must exhibit the required moisture content. For~~
44 ~~additional details regarding the hand test method of determining soil moisture content, use the U. S. Department of~~
45 ~~Agriculture Natural Resources Conservation Service's Program Aid Number 1619, *Estimating Soil Moisture by Feel*~~
46 ~~and *Appearance* published in 1998. Other similar guides have been published such as the NebGuide G84-690 A~~
47 ~~published by Norman L. Klocke et al. for the university of Nebraska in 1998. A copy of these guidelines may be~~
48 ~~obtained from the department. The respondent or the department may also use a reasonably accurate commercially-~~
49 ~~available instrument to determine soil moisture content, including analysis determined with a proctor method. The~~
50 ~~respondent or the department may contract with a public or private laboratory to perform a proctor or other method.~~
51 ~~For proctor analyses, either the standard proctor (ASTM D-698) or the modified proctor (ASTM D-1557) may be~~
52 ~~used. Where possible, methods ft test, ASTM D2922 91—nuclear density).]~~

53 Use of wet suppression sufficient to attain and maintain eighty percent of the optimal moisture content of the soil as
54 determined by a proctor analysis performed by a certified public or private materials testing laboratory. For proctor
55 analyses, either the standard proctor (ASTM D-698) or the modified proctor (ASTM D-1557) may be used. Daily,
56 representative testing of the soil moisture content shall be taken on exposed new surfaces after the top one-half to
57 one inch of the soil is removed at the sampling area. Three times each day, at intervals that are equally spaced
58 throughout the work day, the respondent shall test and record the soil moisture content at three separate

1 representative locations on the permitted property, which will result in a minimum of nine tests each day. To
2 demonstrate compliance, any set of three tests shall average eighty percent of the optimal moisture content of the
3 soil and no individual test shall be less than seventy percent of the optimal moisture content of the soil. Failure to
4 meet the soil moisture content standards as required by Subsection C of 20.11.20.16 NMAC for any set of three tests
5 shall require that the respondent immediately apply necessary control measures at the portion or portions of the
6 representative area where the soil moisture content tested as insufficient, and re-test the same representative
7 locations, as necessary, until the soil moisture content complies with the standards as required by Subsection C of
8 20.11.20.16 NMAC. The respondent or the department shall use a reasonably accurate commercially-available
9 instrument to determine soil moisture content. Where possible, methods for determining soil moisture content shall
10 be consistent with ASTM Standards (e.g. ASTM D-1556-90 – Sand Cone test, ASTM D2922-91 - nuclear density).
11 All tests for soil moisture content shall be documented and retained for the duration of the permit, and shall be made
12 available to the department upon request.

13 (2) Use of properly-maintained fabric fencing material around the perimeter of the disturbed surface
14 area with openings no wider than necessary to allow vehicles to enter or exit the area. The fencing material shall be
15 anchored approximately six inches below the surface on the bottom edge, and when installed shall be approximately
16 24 or more inches ~~high~~ above the existing natural or man-made surface. The fence shall be installed in a durable
17 manner. For example, one durable installation method involves use of steel T-posts spaced approximately eight to
18 10 feet apart with steel mesh wire used as a reinforcement backing to the fabric. Use of fabric fencing standards
19 associated with the national pollutant discharge system may be approved by the department if they are consistent
20 with the requirements of Paragraph (2) of Subsection C of 20.11.20.16 NMAC. The department may also approve
21 alternative fencing material if it provides equal or better control of fugitive dust. Alternatives may include solid
22 walls or sturdy fences that effectively control fugitive dust. To maintain effectiveness of the fence, fugitive dust that
23 accumulates on either side of the fencing ~~must~~ shall be removed promptly.

24 (3) Use of chemical dust suppressants applied in amounts, frequency and rates recommended by the
25 manufacturer, and maintained as recommended by the manufacturer sufficient to substantially reduce fugitive dust
26 leaving the fugitive dust source while active operations are idle, usually used when active operations are suspended
27 for more than 48 hours.

28 (4) A department-approved alternative dust control measure or measures that provide fugitive dust
29 control that is equal to or better than measures in Paragraphs (1), (2), and/or (3) of Subsection C of 20.11.20.16
30 NMAC. Before a permittee may substitute an alternative control measure, the department must approve the control
31 measure in writing as a permit amendment.

32 (5) Stopping active operations that are capable of producing fugitive dust.

33 **D. ~~Determination of high wind event threshold level (threshold level):~~** ~~The department and the~~
34 ~~respondent shall use a reasonably accurate recording anemometer to measure the wind speeds in order to determine~~
35 ~~whether the threshold level has been reached or exceeded. The measurement time period used to determine the~~
36 ~~threshold level shall be five consecutive minutes. Wind velocity measurements by the department and the~~
37 ~~respondent shall be taken on the permitted property or within 200 feet of the permitted property being evaluated.~~
38 ~~Wind measurement results shall be documented, and shall be made available to the permittee and/or person~~
39 ~~responsible for controlling fugitive dust at the permitted property being inspected.] **Active Operations during an**~~
40 **announced high wind event:** The department shall use National Weather Service (NWS) data, recorded at either
41 the Albuquerque International Airport (Sunport) or Double Eagle II Airport, in order to determine forecasted or
42 actual wind speeds when announcing that a high wind event may or will occur. Wind velocity measurements taken
43 in the field by the department, the responsible person or permittee shall be taken at a representative active operation
44 area on the permitted property or by the department within 200 feet of the permitted property being evaluated to
45 determine whether active operations can be continued, resumed or initiated. Wind measurement results shall be
46 documented and retained throughout the duration of the permit, and shall be made available to the department and
47 the permittee and/or person responsible for controlling fugitive dust at the permitted property. A continuous one-
48 hour wind velocity measurement with an average wind speed of less than 20 miles per hour, along with on-site
49 stable soil conditions and effective dust control measures, as stated in the fugitive dust control plan, shall be
50 sufficient to allow active operations during an announced high wind event. However, fluctuations in average wind
51 speed and high wind gusts may re-occur and can cause ineffective dust control during active operations, which may
52 result in a violation of 20.11.20 NMAC. Therefore, the responsible person or permittee shall continuously assess
53 wind conditions and on-site soil conditions during an announced high wind event and shall maintain the reasonably
54 available control measures which include stopping active operations as required by Paragraph (5) of Subsection C of
55 20.11.20.16 NMAC.

56 **E. Limitations on use of affirmative defense:** A respondent may not assert the affirmative defense
57 described in ~~this section~~ 20.11.20.16 NMAC:

58 (1) against an action for injunctive relief; or

1 (2) to prohibit the EPA or a citizen's group from taking an enforcement action.
2 [20.11.20.16 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

3
4 **20.11.20.17 FILING, ~~PROCESSING~~ REVIEW AND INSPECTION FEES:** The fees required by [this
5 part] 20.11.20 NMAC are located in 20.11.2 NMAC, Fees. The filing and review fee portion of the total permit
6 application fee due when a fugitive dust control construction application is filed is non-refundable.
7 [20.11.20.17 NMAC - Rp, 20 NMAC 11.20 II.2 - 9, 3/1/04, 3/17/08]

8
9 **20.11.20.18 FUGITIVE DUST CONTROL CONSTRUCTION PERMIT APPLICATION**
10 **PROCESSING:**

11 **A.** ~~[Any person]~~ A person who is required to submit a fugitive dust control construction permit
12 (permit) application and plan for active operations that will disturb at least three-quarters of an acre, but no more
13 than 25 acres, shall submit the permit application and plan [along] with the applicable fees to the department no
14 fewer than 10 [working] business days prior to the start of active operations. Within 10 business days of the
15 department receiving the permit application, plan and fees, the department will approve the permit, approve the
16 permit with conditions or deny the permit.

17 **B.** ~~[Any person]~~ A person who is required to submit a [fugitive dust control] permit application and
18 plan for active operations that will disturb more than 25 acres shall submit the permit application and plan [along]
19 with the applicable fees to the department no fewer than 20 [working] business days prior to the start of active
20 operations. Within 20 business days of the department receiving the permit application, plan and fees, the
21 department will approve the permit, approve the permit with conditions or deny the permit.

22 **C.** ~~Within 10 working days of the department receiving the permit application and fees for active~~
23 ~~operations that will disturb three quarters of an acre or more, but no more than 25 acres, the department will approve~~
24 ~~the permit, approve the permit with conditions or deny the permit.~~

25 ~~**D.** Within 20 working days of the department receiving the permit application and fees for active~~
26 ~~operations that will disturb more than 25 acres, the department will approve the permit, approve the permit with~~
27 ~~conditions or deny the permit.~~

28 ~~**E.** If the permit is not issued or denied within the requisite time frames enumerated in Subsections C~~
29 ~~and D of 20.11.20.18 NMAC, and 30 working days have elapsed from the filing of the permit application, the permit~~
30 ~~shall be automatically approved and operations may commence.~~

31 **F.** ~~The permittee or designated responsible person or official shall make the permit available to all~~
32 ~~employees, agents, sub contractors, and any other person performing work in the area of active disturbance to assist~~
33 ~~in maintaining compliance with this part. The permittee shall explain the requirements of the permit to appropriate~~
34 ~~employees, contractors and agents working at the site. The permittee shall provide information to any other~~
35 ~~interested person in the area as to where they may obtain a copy of the permit from the department.~~

36 **G.** ~~It is the responsibility of the permittee or designated responsible person or official to ensure that~~
37 ~~the fugitive dust control permit or amended permit contains current contact information and that a copy is~~
38 ~~maintained at the work site and is provided to the department. Failure to maintain and provide up to date contact~~
39 ~~information shall be a violation of this part.~~

40 **H.** ~~The department may amend the permit when requested to do so by the permittee. No fee shall be~~
41 ~~charged for amending a permit, unless the amendment increases the number of acres covered by the permit. Both the~~
42 ~~department and the permittee must sign an amended permit.~~

43 **I.** ~~The department shall implement an electronic filing system using the Internet in order to expedite~~
44 ~~processing and filing of fugitive dust control permits and plan applications.]~~

45 **C.** The fugitive dust control plan may be in any form including a copy of a program that complies
46 with any other statute or regulation so long as the plan provides reasonably available control measures whose
47 purpose is to mitigate fugitive dust and the plan meets the objectives of 20.11.20 NMAC. If the plan does not
48 specifically enumerate the control measures proposed to mitigate fugitive dust, the permit application shall be
49 deemed incomplete and shall be rejected. If an incomplete application is rejected, a new or amended application
50 may be filed and the time limits in Subsections A or B of 20.11.20.18 NMAC shall apply as if the initial application
51 had not been filed.

52 **D.** If all requirements of 20.11.20 NMAC have been met by the applicant, the department shall issue
53 a permit to the permittee, which shall authorize commencement of active operations. If the department has not
54 approved, denied, or notified the applicant regarding the permit application within 30 business days of the
55 department's receipt of the permit application, plan and fees, then the permit shall be automatically approved and
56 operations may commence if the permittee uses the reasonably available control measures and fugitive dust control
57 plan as submitted in the application. However, if the measures and plan are not effective, the department may
58 initiate an enforcement action for violation of 20.11.20 NMAC.

1 [20.11.20.18 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

2
3 **20.11.20.19 PUBLIC AND PRIVATE UNPAVED ROADWAYS, SHORT-CUTS AND UNPAVED**
4 **PARKING AREAS:**

5 A. ~~[Beginning one year after the effective date of this part,]~~ No unpaved roadways greater than one-
6 quarter mile in length and no unpaved parking areas may be constructed or allowed to be constructed or
7 reconstructed on any publicly-owned land or privately-owned ~~[land]~~ real property, unless the ~~[roadway or parking~~
8 ~~area is stabilized and maintained consistent with good engineering and maintenance practices]~~ owner has applied for
9 and received a permit pursuant to 20.11.20.13 NMAC or 20.11.20.14 NMAC. Owners in possession of a valid
10 fugitive dust control permit that wish to construct additional unpaved roadways shall apply for an amendment to
11 their permit which shall include payment of any fees required by 20.11.2 NMAC. In addition, ~~[beginning one year~~
12 ~~after the effective date of this part,]~~ no ~~[privately or publicly owned]~~ unpaved short-cut of any length on private or
13 public property may be constructed or be allowed to remain usable when it is evident the short cut is being used by
14 motor vehicle drivers to save time by avoiding use of a dedicated and authorized roadway. A variance from ~~[this]~~
15 Subsection A of 20.11.20.19 NMAC may be granted by the board in a manner consistent with the variance
16 procedures provided in ~~[74-2-8 NMSA]~~ 20.11.7 NMAC.

17 B. Owners or operators shall use reasonably available control measures on all unpaved roadways and
18 unpaved parking areas ~~[so visible fugitive dust leaving the property is not visible longer than a total of 15 minutes in~~
19 ~~any 60 minute observation period using visible fugitive dust detection method described in Section 20.11.20.26~~
20 ~~NMAC of this part, or an equivalent method approved in writing by the department]~~ and shall comply with the
21 general provisions established in 20.11.20.12 NMAC.

22 C. ~~[Existing]~~ **Public unpaved roadway; complaints.** If the department receives a ~~[written]~~ fugitive
23 dust complaint regarding an ~~[existing]~~ unpaved public roadway, ~~[including any roadways regulated pursuant to~~
24 ~~Subsection D of 20.11.20.13 NMAC,]~~ the department will forward the complaint by hand delivery, inter-office mail
25 delivery or certified mail, return receipt requested, to the governmental agency responsible for maintenance of the
26 roadway. Within 45 calendar days from the date the complaint was received by the responsible agency, the
27 responsible agency shall make a reasonable effort to address the complaint, and the governmental agency shall
28 provide the department with a written report of the actions taken to resolve the complaint. Failure of the responsible
29 agency to submit a timely report shall be a violation of [this part] 20.11.20 NMAC.

30 [20.11.20.19 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

31
32 **20.11.20.20 ABRASIVE PRESSURE BLASTING OPERATIONS:** ~~[All persons performing]~~ A person
33 who performs abrasive pressure blasting operations shall employ reasonably available control measures or other
34 effective control measures at all times to comply with 20.11.20.12 NMAC and shall substantially reduce fugitive
35 dust emissions that are leaving the property where the abrasive pressure blasting operations are taking place. ~~[Any~~
36 ~~person]~~ A person who is conducting abrasive pressure blasting operations is not required to obtain a fugitive dust
37 control permit from the department. ~~[Note that]~~ However, stationary source permitting regulations, such as [Part 4-1]
38 20.11.41 NMAC and [Part 4-2] 20.11.42 NMAC, may apply to pressure blasting operations.

39 [20.11.20.20 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

40
41 **20.11.20.21 [MECHANICAL (LEAF) BLOWERS; PROPER USE REQUIRED:** Any person using a
42 mechanical blower (e.g. leaf blower) or other device designed to use forced air to move dust or organic material and
43 debris shall take all reasonable efforts to ensure that leaves, dust and other debris do not remain deposited upon
44 publicly owned property as the result of the use of the leaf blower or other device. The intent of this requirement is
45 to prevent the dust, material and debris from becoming ground up by abrasive action of tires and then being
46 entrained into the atmosphere as particulate matter.] **CONTROL OF GREENWASTE MATERIAL:** To prevent
47 greenwaste from becoming ground up by the abrasive action of tires, which may then be entrained into the
48 atmosphere as particulate matter, all persons causing, directing or authorizing greenwaste to be deposited on
49 publicly-owned real property shall promptly remove or cause the removal of the greenwaste.

50 [20.11.20.21 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

51
52 **20.11.20.22 DEMOLITION AND RENOVATION ACTIVITIES; [PERMIT REQUIRED;] FUGITIVE**
53 **DUST CONTROL CONSTRUCTION PERMIT AND ASBESTOS NOTIFICATION [REQUIRED]**
54 **REQUIREMENTS:** No person shall demolish any building containing over 75,000 cubic feet of space without first
55 [obtaining] delivering to the department a fugitive dust control construction permit application and fugitive dust
56 control plan with the fee required by 20.11.2 NMAC. No active operations shall commence until a department
57 manager, supervisor, scientist, field operations officer or health specialist signs a fugitive dust control construction
58 permit and a copy of the signed permit is available at the site of active operations. Failure to obtain a fugitive dust

1 control construction permit prior to commencement of demolition activities as described in 20.11.20.22 NMAC shall
2 be a violation of 20.11.20 NMAC. All demolition and renovation activities shall employ reasonably available
3 control measures at all times, and, when removing asbestos containing materials (ACM), shall also comply with the
4 federal standards incorporated in 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary
5 Sources. ~~[Part 64 requires any]~~ A person who demolishes or renovates any commercial building, residential
6 building containing five or more dwellings, or a residential structure that will be demolished in order to build a
7 nonresidential structure or building ~~[to]~~ shall file an asbestos notification with the department no fewer than 10
8 calendar days before the start of such activity. Written asbestos notification certifying to the presence of ACM is
9 required even if ~~[asbestos]~~ regulated ACM is not or may not be present in such buildings or structures. Failure to
10 provide proper asbestos notification~~[-, or comply with the federal standards incorporated in 20.11.64 NMAC,]~~ shall
11 be a violation of the requirements of 20.11.64 NMAC. Knowingly violating provisions of 20.11.64 NMAC is a
12 fourth-degree felony pursuant to the New Mexico Air Quality Control Act, 74-2-14.C.3 NMSA 1978.
13 [20.11.20.22 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]
14

15 **20.11.20.23 REASONABLY AVAILABLE CONTROL MEASURES FOR FUGITIVE DUST:** The
16 permittee may include in the permit application one or more of the reasonably available control measures included
17 in [this Section] 20.11.20.23 NMAC or one or more alternative fugitive dust control measures, including measures
18 taken to comply with any other statute or regulation ~~[that would]~~ if the measures will effectively control fugitive
19 dust during ~~[the]~~ active operations or ~~[construction activity]~~ on inactive disturbed surface areas. At minimum, all
20 projects requiring a fugitive dust control construction permit shall utilize paved or gravel entry/exit aprons, steel
21 grates or other devices capable of removing mud and bulk material from vehicle traffic tires, and erect a properly-
22 maintained fabric fencing material around the perimeter of the disturbed surface area with openings no wider than
23 necessary to allow vehicles to enter or exit the area. The fencing material shall be anchored approximately six
24 inches below the surface on the bottom edge, and when installed shall be approximately 30 or more inches above the
25 existing natural or man-made surface. To maintain effectiveness of the entry/exit apron, steel grate or other similar
26 device (device), accumulated materials shall be removed promptly. To maintain effectiveness of the fence, fugitive
27 dust that accumulates on either side of the fencing shall be removed promptly.

28 **A. Unpaved roadways:**

- 29 (1) paving using recycled asphalt, asphaltic concrete, concrete, or petroleum products legal for such
30 use;
31 (2) using dust suppressants applied in amounts, frequency and rates recommended by the
32 manufacturer and maintained as recommended by the manufacturer;
33 (3) using wet suppression; or
34 (4) using traffic controls, including decreased speed limits with appropriate enforcement; other traffic
35 calming methods, vehicle access restrictions and controls; road closures or barricades; and off-road vehicle access
36 controls and closures.

37 **B. Paved roadways:**

- 38 (1) cleaning up spillage and track out as necessary to prevent pulverized particulates from being
39 entrained into the atmosphere;
40 (2) ~~using paved or gravel entry/exit aprons with devices, such as steel grates, capable of knocking~~
41 ~~mud and bulk material off vehicle tires;~~
42 ~~_____~~(3) using on-site wheel washes; or
43 (4)(3) performing regularly scheduled vacuum street cleaning or wet sweeping with a sweeper certified
44 by the manufacturer to be efficient at removing particulate matter having an aerodynamic diameter of less than 10
45 microns (i.e. PM₁₀).

46 **C. Trucks hauling bulk materials on public and private roadways:**

- 47 (1) using properly secured tarps or cargo covering that covers the entire surface area of the load;
48 (2) preventing leakage from the truck bed, sideboards, tailgate, or bottom dump gate;
49 (3) using wet suppression to increase moisture content of the bulk materials being hauled;
50 (4) using dust suppressants applied in amounts, frequency and rates recommended by the
51 manufacturer; or
52 (5) maintaining a minimum of six inches of freeboard from the rim of the truck bed. Freeboard means
53 the vertical distance from the highest portion of the load abutting the bed and the lowest part of the top rim of the
54 truck bed.

55 **D. Active operations in construction areas and other ~~[land]~~ surface disturbances:**

- 56 (1) Short term control measures may include:
57 (a) wet suppression;

- 1 (b) dust suppressants applied in amounts, frequency and rates recommended by the
2 manufacturer and maintained as recommended by the manufacturer;
- 3 (c) ~~temporary upwind windbreaks, including fabric fences where the top [is] at least four feet~~
4 ~~above grade, and with the bottom of the fence sufficiently anchored to the ground to prevent material from blowing~~
5 ~~underneath the fence; all windbreaks and fabric fences should be maintained in an upright and functional condition~~
6 ~~at all times until no longer needed to prevent or abate fugitive dust; all accumulated material on the windward side~~
7 ~~of the windbreak should be periodically removed to prevent failure of the windbreak;~~
8 ~~_____~~ (d) ~~_____~~ watering the site at the end of each workday [~~sufficient~~] sufficiently to stabilize the work
9 area;
- 10 (e)(d) applying dust suppressants in amounts, frequency and rates recommended by the
11 manufacturer on the worksite at the end of each workweek if no active operations are going to take place over the
12 weekend or if active operations stop for more than two consecutive days;
- 13 (f)(e) starting construction at the location that is upwind from the prevailing wind direction and
14 stabilizing disturbed areas before disturbing additional areas;
- 15 (g)(f) stopping active operations during high wind; or
16 (h)(g) clean up and removal of track-out material.
- 17 (2) Long term control measures [~~should~~] may include:
- 18 (a) site stabilization using dust suppressants applied in amounts, frequency and rates
19 recommended by the manufacturer and maintained as recommended by the manufacturer;
- 20 (b) reseeded using native grasses as specified in [~~this part~~] 20.11.20.24 NMAC;
- 21 (c) xeriscaping;
- 22 (d) installing parallel rows of fabric fencing or other windbreaks set perpendicular to the
23 prevailing wind direction either onsite or on a nearby property with the permission of the nearby property owner;
- 24 (e) surfacing with gravel or other mulch material [~~of~~] with a size and density sufficient to
25 prevent surface material from becoming airborne;
- 26 (f) mulching and crimping of straw or hay as specified in [~~Section 20.11.20.27 NMAC of this~~
27 ~~part~~] Subsection D of 20.11.20.24 NMAC ;
- 28 (g) installing permanent perimeter and interior walls;
- 29 (h) using conventional landscaping techniques; or
- 30 (i) clean up and removal of track-out material.
- 31 **E. Bulk material handling:**
- 32 (1) using spray bars;
- 33 (2) applying wetting agents (surfactants) to bulk material;
- 34 (3) using wet suppression through manual or mechanical application;
- 35 (4) adding dust suppressants to bulk materials in amounts, frequency and rates recommended by the
36 manufacturer and maintained as recommended by the manufacturer;
- 37 (5) stopping bulk material handling, processing, loading or unloading during high wind conditions;
- 38 (6) reducing process speeds; or
- 39 (7) reducing drop heights.
- 40 **F. Industrial sites:**
- 41 (1) paving roadways and parking area with recycled asphalt, asphaltic concrete, concrete, or
42 petroleum products legal for use;
- 43 (2) performing regularly scheduled vacuum street cleaning or wet sweeping;
- 44 (3) regularly using wet suppression on unpaved areas;
- 45 (4) using dust suppressants applied in amounts, frequency and rates recommended by the
46 manufacturer, and maintained as recommended by the manufacturer;
- 47 (5) installing wind breaks;
- 48 (6) installing enclosures;
- 49 (7) installing on-site anemometers to measure wind speed; the anemometer should trigger a suitable
50 warning mechanism such as a strobe light or an audible alarm (that will not violate any applicable noise ordinance)
51 to notify on-site personnel of high wind conditions;
- 52 (8) increasing wet suppression applications before and during high wind conditions; or
- 53 (9) stopping active operations during high wind conditions.
- 54 **G. Demolition and renovation activities when asbestos-containing materials are not present:**
- 55 (1) using constant wet suppression on the debris piles during demolition;
- 56 (2) using water or dust suppressants on the debris pile, applied in amounts, frequency and rates
57 recommended by the manufacturer;
- 58 (3) using enclosures;

- 1 (4) using curtains or shrouds;
 2 (5) using negative pressure dust collectors; or
 3 (6) stopping demolition during high wind conditions.
- 4 **H. Milling, grinding or cutting of paved or concrete surfaces:**
 5 (1) constantly using wet suppression;
 6 (2) ~~[ongoing clean up of milled, ground or cut material by using wet sweeping]~~ continuous wet
 7 sweeping during milling, grinding, or cutting operations;
 8 (3) using dust suppressants applied in amounts, frequency and rates recommended by the
 9 manufacturer, and maintained as recommended by the manufacturer;
 10 (4) using enclosures; or
 11 (5) using curtains or shrouds.
- 12 **I. Pressure blasting operations:**
 13 (1) using non-friable abrasive material;
 14 (2) using curtains, enclosures or shrouds;
 15 (3) using negative pressure dust collectors;
 16 (4) using constant wet suppression;
 17 (5) maintaining ongoing clean up of abrasive material; or
 18 (6) stopping active operations during high wind conditions.
- 19 **J. Spray painting and other coatings:**
 20 (1) using enclosures that comply with applicable fire codes; or
 21 (2) using curtains, enclosures or shrouds.
- 22 **K. High wind contingency measures:**
 23 (1) installing and using on-site anemometers to measure wind speed; the anemometer should trigger a
 24 suitable warning mechanism such as a strobe light or an audible alarm that will not violate any applicable noise
 25 ordinance to notify ~~[site]~~ on-site personnel of high wind conditions;
 26 (2) using constant wet suppression;
 27 (3) using dust suppressants applied in amounts, frequency and rates recommended by the
 28 manufacturer;
 29 (4) using wetting agents or surfactants on disturbed areas, bulk materials or stockpiles;
 30 (5) slowing down process; or
 31 (6) shutting down active operations.
- 32 **L. Stockpile Formation:**
 33 (1) Active stockpiles:
 34 (a) applying wet suppression on a regular basis;
 35 (b) utilizing wind breaks (fabric fencing or other materials);
 36 (c) reducing vehicle speeds or using other traffic calming measures (e.g. sculpted piles); or
 37 (d) restricting access to stockpile areas during non-work hours.
 38 (2) Inactive stockpiles:
 39 (a) maintaining a stable outer crust over stockpile area;
 40 (b) using dust suppressants applied in amounts, frequency and rates recommended by the
 41 manufacturer, and maintained as recommended by manufacturer;
 42 (c) restricting access to stockpile areas; or
 43 (d) utilizing wind breaks (fabric fencing or other materials).

44 [20.11.20.23 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

45
 46 **20.11.20.24 NATIVE GRASS SEEDING AND MULCH SPECIFICATIONS:**

47 **A.** If the fugitive dust control permit includes provisions to revegetate a disturbed area, the permittee
 48 ~~[can choose to]~~ may use the ~~[following]~~ specifications described in 20.11.20.24 NMAC. ~~[Because]~~ When properly
 49 applied and maintained, these specifications have provided reasonably successful results in the past in Bernalillo
 50 county. They are included here as a reference for permittees and others ~~[choosing]~~ who choose to use native
 51 revegetation as a long-term reasonably available control measure. However, use of these specifications does not
 52 guarantee success. Failure of any revegetation method as a long-term reasonably available control measure requires
 53 re-application or other control method approved by the department. The disturbed area shall maintain compliance
 54 with 20.11.20 NMAC.

55 (1) The native seed species used and rate of application should be as ~~[shown]~~ provided in Subsection
 56 F of ~~[Section]~~ 20.11.20.24 NMAC.

1 (a) If the area to be seeded is along a recreational trail of any type, the seed mixes for either
2 type of soil listed in Subsection F of ~~[this section]~~ 20.11.20.24 NMAC should not include four-wing saltbush and the
3 seeding rate should be reduced by one pound per acre.

4 (b) **Seeds may be pre-mixed by a seed dealer.** Each pre-mixed bag of seed should be sealed
5 and labeled by the seed dealer in accordance with federal seed laws and New Mexico department of agriculture
6 labeling laws. The label should include: variety, kind of seed, lot number, purity, germination, percent crop, percent
7 inert, percent weed (including noxious weeds), origin, test data and net weight. Federal seed laws require that
8 analysis shall be no older than five months for seed shipped interstate and no older than nine months for seed
9 shipped intra-state.

10 (c) **48 hours before seeding,** the owner or operator should give written notice to the
11 department by hand delivery or facsimile, requesting inspection of the sealed seed bags to be used. The department
12 may inspect the sealed seed bags and labels.

13 (2) **Fertilizer and soil amendments:** Unless otherwise specified in the fugitive dust control permit,
14 no fertilizer or other soil amendments are required on areas to be reseeded.

15 (3) **Mulch:** Areas to be reseeded should be mulched as described below unless otherwise specified in
16 the permit.

17 (a) **Hay mulch:** Perennial native or introduced grasses of fine-stemmed varieties should be
18 used unless otherwise specified in the plan. At least 65 percent of the herbage by weight of each bale of hay should
19 be 10 inches in length or longer. Hay with noxious seed or plants should not be used. Rotted, brittle, or moldy hay
20 are not considered acceptable. Marsh grass or prairie hay composed of native grass of species to be seeded is
21 considered acceptable. Tall wheat grass, intermediate wheat grass, switch grass, or orchard hay will be acceptable if
22 cut prior to seed formation. Marsh grass hay should be composed of mid and tall native, usually tough and wiry
23 grass and grass-like plants found in the lowland areas within the Rocky Mountain region. Hay should be properly
24 cured prior to use. Hay that is brittle, short fibered or improperly cured is not considered acceptable. Hay mulch
25 should be crosshatched crimped to minimum depth of two inches.

26 (b) **Straw mulch:** Small grain plants such as wheat, barley, rye, or oats should not be used.
27 Alfalfa or the stalks of corn, maize or sorghum are not considered acceptable. Material which is brittle, shorter than
28 10 inches or which breaks or fragments during the crimping operation are not considered acceptable. Straw mulch
29 should be crosshatched crimped to minimum depth of two inches.

30 (c) **Gravel mulch:** Gravel mulch should be a maximum of three-quarter to one inch in
31 diameter and must have been crushed or screened with a minimum of one angular face. Experience has
32 demonstrated that gravel mulch provides very successful results on steep slopes and other areas that may be difficult
33 to stabilize.

34 (d) **Erosion control mats, fabric or blankets:** The type of erosion control mats, fabric or
35 blankets used should be specified in the fugitive dust control permit.

36 **B. Seed bed preparation:**

37 (1) Prior to starting seed bed preparation, the final grades of all earthwork should be inspected and
38 certified by a New Mexico licensed engineer, and a copy of the certification should be delivered to the department:

39 (a) no soil preparation should be performed when the surface is wet or muddy or when the soil
40 is so moist that the soil is not fully loosened by the discing operation;

41 (b) if erosion, crusting or re-compaction occurs in an area before seeding, mulching and
42 crimping are successfully completed, the area should be reworked, beginning with seedbed preparation.

43 (2) **Mechanical preparation:** The seedbed should be loosened to a minimum depth of six inches by
44 disc or harrow. Areas of heavy or compacted soil may require additional preparation by chiseling or ripping if
45 discing alone does not result in preparation to the full minimum depth of six inches. The soil should be worked to a
46 smooth surface and should be free of clods, stones four inches in diameter and larger, and debris or foreign material
47 that could interfere with seeding or crimping operations.

48 (3) **Hand preparation:** Areas which cannot be prepared with mechanized equipment because of
49 small size, irregular shape or slope may be prepared to a minimum depth of two inches using hand tools or a
50 rototiller, as specified in the permit.

51 **C. Seeding:**

52 (1) Should not start until the seed bed preparation has been inspected and certified by a New Mexico
53 licensed engineer, a New Mexico licensed landscape architect, or other professional approved by the department
54 (e.g. a department certified erosion control specialist). Notice in writing or by facsimile providing certification
55 pertaining to the seed bed preparation should be given to the department at least 48 hours prior to beginning seeding
56 operations so that the department has an opportunity to inspect the site. No seeding operations should be conducted
57 when steady wind speeds exceed 10 miles per hour.

58 (2) **Seed application:**

1 (a) **Drill seeding:** Drill seeding is highly recommended. Seed should be applied with a
2 “rangeland” type seed drill equipped with packer wheels. Seed should be drilled to a maximum depth of one-half
3 inch. Direction of seeding should be across slopes and on the contour whenever possible.

4 (b) **Broadcast seeding:** Seed may be applied using the broadcast method when size,
5 irregular shape, or slope exceeding three to one, prevents the use of a seed drill. Seed may be broadcast by hand or
6 by a mechanical seeder provided that the seed is evenly distributed over the seeding area. Areas that are broadcast
7 seeded should be seeded at a rate that is double the rate used for drill seeding. Areas of broadcast seeding should be
8 hand raked to cover seed.

9 (c) **Seeding with gravel mulch:** Areas to be gravel mulched should be seeded at double the
10 standard seed rate with one-half the seed applied prior to application of gravel and one-half of the seed applied on
11 the surface of the gravel. Water should be applied in a quantity sufficient to wash seed from the surface and into the
12 gravel.

13 (d) **Hydro seeding:** Hydro seeding with native grass will normally only be successful on areas
14 that will be irrigated.

15 **D. Hay or straw mulching:**

16 (1) All seeded areas should be mulched unless otherwise specified in the fugitive dust control permit.
17 On seeded areas that are level or have slopes that are a ratio of three to one or less, any of the four types of mulching
18 below may be used. On erosion control areas or slopes steeper than a ratio of three to one, only gravel mulch or
19 erosion control materials should be used.

20 (2) **Hay mulch** should be applied at a minimum rate of one and one-half tons per acre of air dry hay.

21 (3) **Straw mulch** should be applied at a minimum rate of two and one-half tons per acre of air dry
22 straw.

23 (4) Hay or straw mulch should be crosshatched crimped into the soil to a minimum depth of two
24 inches.

25 (a) The mulch should be spread uniformly over the area either by hand or with a mechanical
26 mulch spreader.

27 (b) When spread by hand, the bales of mulch should be torn apart and fluffed before spreading.

28 (c) Mulching should stop when wind speeds exceed 15 miles per hour.

29 (d) The mulch should be wetted down and allowed to soften for approximately 15 to 20
30 minutes prior to crimping.

31 (e) A heavy disc should be used to crimp or anchor the mulch into the soil to a minimum depth
32 of two inches. A mulch-tiller with flat serrated discs at least one-quarter of an inch in thickness, having dull edges
33 with discs spaced six inches to eight inches apart or similar equipment should be used. The discs should be of
34 sufficient diameter to prevent the frame of the equipment from dragging the mulch.

35 (f) The crimping operations should be across the slope where practical, but not parallel to
36 prevailing winds. In general, crimping should be in a north-south direction or in tight interlocking “S” curves to
37 avoid straight east-west crimp lines.

38 (g) If small grain straw mulch is used, the mulch should be crimped in two directions in a
39 cross-hatch pattern.

40 (5) **Gravel mulch:** Gravel mulch should be laid evenly by hand or by equipment to a thickness of
41 two inches.

42 (6) **Erosion control mats, fabric or blankets:** The type of erosion control mats, fabric or blankets
43 used should be as specified in the fugitive dust control permit. Anchoring of the erosion control materials should be
44 consistent with the manufacturer’s recommendations.

45 (7) Upon completion of the reseeding project, the permittee should deliver written notice to the
46 department in a timely manner, certifying completion of seeding project.

47 **E. Protection of native grass seeded area:** [H] The person, owner or operator who has elected to
48 use native seeding as a control measure ~~[they]~~ shall be responsible for protecting and caring for the seeded area until
49 plants are fully established. After project completion, the owner or operator ~~[may need to]~~ shall repair any damage
50 to seeded areas caused by pedestrian or vehicular traffic or vandalism. During periods of low rainfall, supplemental
51 watering may be ~~[a way to improve success in establishing]~~ required to successfully establish the native grass seed.
52 Because the owner is responsible for the fugitive emissions leaving the property, failure of the reseeding project
53 shall not be a defense to enforcement of ~~[this part]~~ 20.11.20 NMAC. The owner or operator may find it necessary to
54 reseed or use other reasonably available control measures to bring the property into compliance. The department
55 strongly recommends that any area being seeded or mulched be adequately fenced and posted to prevent trespass
56 traffic.

1 F. Seed specifications and rates should be used as established by the most recent edition of “City of
2 Albuquerque Standard Specifications for Public Works Construction – [1986, Section 1012,] *Native Grass Seeding*”
3 section as updated by the city or as approved in writing by the department.

4 G. **Variations in seeding due to special environmental conditions:** The owner or operator may use
5 a different seeding mixture in order to address special environmental conditions that make it unlikely for success of
6 the reseeding effort. Use of an annual rye (*Lolium sp.*) or cool season grasses (e.g. barley at 10 pounds per acre)
7 may be added to the seed specification in order to help stabilize soils, especially for disturbed areas comprising 25
8 acres or more when a significant amount of the [~~land area~~] publicly-owned land or privately-owned real property is
9 not expected to be built upon within one year.

10 [20.11.20.24 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

11
12 **20.11.20.25 REVIEW MEETING; [~~HEARING ON THE MERITS REGARDING PERMIT~~**
13 **~~APPLICATIONS AND PERMITS~~] TIMELY PETITION FOR HEARING BEFORE THE BOARD:**

14 [~~_____ A. _____ If a permit applicant is adversely affected by, or disagrees with the division’s proposed decision~~
15 ~~regarding the applicant’s permit application, the applicant may request an informal review meeting to discuss the~~
16 ~~division’s proposed decision. The request shall be in writing or on a form provided by the division. Within 15~~
17 ~~working days of the applicant receiving the proposed decision, the applicant shall deliver the request to the director~~
18 ~~and the division manager. Unless the director receives a timely request for an informal review meeting, the~~
19 ~~division’s proposed decision regarding the permit application shall be final. Within 10 working days after receiving~~
20 ~~the request, the director shall hold an informal review meeting with the applicant and a division representative (e.g.~~
21 ~~division manager or the person issuing the proposed decision regarding the permit application) in an attempt to~~
22 ~~resolve disagreements. Within two working days after the informal review meeting, the division representative shall~~
23 ~~issue a final decision regarding the permit application. If the permit applicant or permittee is adversely affected by~~
24 ~~the final decision made by the division representative, the permit applicant or permittee may follow the procedures~~
25 ~~described in the following subsection.~~

26 ~~_____ B. _____ A person adversely affected by the decision of the division regarding a permit application or~~
27 ~~permit (“petitioner”) may file a petition for a hearing on the merits before the board. The petition shall be in writing,~~
28 ~~addressed to the board and be delivered to the director no later than 30 consecutive days after the later of: 1) the~~
29 ~~decision of the division regarding the proposed application, if no timely request has been made for an informal~~
30 ~~review meeting; or 2) the final decision of the division representative following an informal review meeting. Unless~~
31 ~~the director receives a timely petition for a hearing on the merits, the decision of the division regarding the permit~~
32 ~~application or permit shall be final.~~

33 ~~_____ C. _____ If a timely petition for a hearing on the merits is received by the director, the board shall hold a~~
34 ~~hearing on the merits within 60 consecutive days after the director receives the petition. No fewer than 21~~
35 ~~consecutive days before the start of the hearing, the board shall notify the petitioner and the applicant or permittee, if~~
36 ~~other than the petitioner, of the date, time and place of the hearing by certified mail. If the subject of the petition is a~~
37 ~~permitting action deemed by the board to substantially affect the public interest, the board shall cause the notice of~~
38 ~~the date, time and place of the hearing to be published. In such circumstances, the public shall also be given~~
39 ~~reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at~~
40 ~~the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at~~
41 ~~the hearing.~~

42 ~~_____ D. _____ The board may designate a hearing officer to take evidence in the hearing and recommend a~~
43 ~~decision to the board. All hearings shall be recorded.~~

44 ~~_____ E. _____ The burden of proof shall be upon the petitioner. Based upon the evidence presented at the~~
45 ~~hearing, within 30 consecutive days of the close of the hearing, the board shall sustain, modify, or reverse the~~
46 ~~decision of the division regarding the permit application or permit. The decision of the board shall be final and may~~
47 ~~be appealed consistent with 74-2-9 NMSA.]~~

48
49 If a permit applicant or permittee (requestor) asks the department to meet informally to review and reconsider the
50 department’s decision regarding the applicant’s permit application in the manner provided by 20.11.20.25 NMAC,
51 the process shall not extend the 30-day deadline for filing a timely petition for a hearing before the board as
52 provided by 20.11.81 NMAC. If a requestor is adversely affected by, or disagrees with the department’s decision
53 regarding the requestor’s permit application, the requestor may request an informal review meeting to discuss the
54 department’s decision. The request shall be in writing or on a form provided by the department. Within five
55 business days after the requestor receives the department’s decision regarding the permit application, the requestor
56 shall deliver the written request to a division manager. Within five business days after a division manager receives
57 the request, a division manager or designee shall hold an informal review meeting with the requestor and an
58 additional division representative (e.g. the person assigned to the permit application review) in an attempt to resolve

1 disagreements. Within two business days after the informal review meeting, a division representative shall mail,
2 hand deliver or deliver by facsimile a statement to the requestor stating whether the department has changed its
3 decision regarding the permit application, and, if so, specifying the change and the reason for the change. A person
4 who participated in a 20.11.20 NMAC permitting action before the department and who is adversely affected by the
5 decision made by the department, may follow the procedures described in 20.11.81 NMAC to petition for a hearing
6 before the board.

7
8 [20.11.20.25 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

9
10 **20.11.20.26 VISUAL DETERMINATION OF FUGITIVE DUST EMISSIONS [VIOLATIONS]:** The
11 following method, hereafter called the “visible fugitive dust detection method”, is used to visually determine the
12 total amount of time that fugitive dust emissions are visible during a continuous one-hour observation period. If a
13 trained department observer records visible fugitive dust ~~leaving~~ crossing a property line of the property being
14 investigated, for a total of 15 minutes or more during a continuous one-hour period, a violation of ~~[this part]~~
15 20.11.20 NMAC has occurred. The observer does not have to be certified in procedures found in 40 CFR 60,
16 Method 9, *Visual Determination of the Opacity of Emissions from Stationary Sources* (EPA Method 9). However,
17 the observer ~~must~~ shall receive ~~[adequate]~~ adequate training regarding how to ~~[properly]~~ properly identify a violation of ~~[this part]~~
18 20.11.20 NMAC that is caused by anthropogenic activities and to distinguish fugitive dust that emanates from a
19 ~~[non-regulated]~~ source that is not required by a board regulation other than 20.11.20 NMAC to obtain a permit [and
20 be certified by the department as a trained observer]. Training shall consist of attendance at and completion of the
21 lecture portion of a Method 9 certification course and familiarity with the written materials provided during the
22 course. The [following] method described in Subsections A through D of 20.11.20.26 NMAC does not require the
23 opacity of emissions to be determined during the observation period[~~, but determines the total amount of time in a~~
24 one-hour period during which visible dust emissions are observed leaving a property line].

25 **A.** To ~~[properly]~~ correctly perform this method, the observer shall use two stopwatches. One
26 stopwatch shall be used to record the continuous one-hour time period during which the observations ~~[are]~~ is
27 conducted. This period shall be known as the “observation period.” The second stopwatch ~~[will]~~ shall be used to
28 record the total accumulated amount of time that ~~[emissions are visible]~~ visible fugitive dust is crossing a property
29 line during the observation period. The second stopwatch shall establish the “visible fugitive dust emission time”.

30 **B.** ~~[Prior to the observation, the observer shall determine the location of potential fugitive dust source(s)~~
31 ~~and the location of the downwind property line for the source. The observer shall sketch the location of the fugitive~~
32 ~~dust source(s), and when feasible, record the observer’s location on a copy of the fugitive dust control permit map or~~
33 ~~aerial photograph; and sketch or photograph the location of the downwind property line and physical features that~~
34 ~~help define the property line; and sketch or photograph the observer’s location during the observations; and sketch~~
35 ~~the position of the sun relative to the observer. The observer shall document that the observed fugitive dust is not~~
36 ~~originating from an upwind source other than the source being evaluated. The observer must be at least 15 feet~~
37 ~~away from the visible fugitive dust emissions, and not more than one-quarter mile away.]~~

38 Prior to the observation, the observer shall:

39 (1) determine the location of potential fugitive dust source(s) and the location of the downwind
40 property line for the source;

41 (2) sketch the location of the fugitive dust source(s), and, when available during the observation, record
42 the observer’s location on a copy of the fugitive dust control permit map or aerial photograph;

43 (3) sketch or photograph the location of the downwind property line and physical features that help
44 define the property line;

45 (4) sketch or photograph the observer’s location during the observations;

46 (5) sketch the position of the sun relative to the observer;

47 (6) document that the visible fugitive dust is not originating from an upwind source other than the
48 source being evaluated; and

49 (7) maintain a minimum distance of at least 15 feet from the visible fugitive dust being observed, and
50 a maximum distance of no more than one-quarter mile away.

51 **C.** The observer shall record:

52 (1) observer’s name and affiliation; ~~[and]~~

53 (2) date of observation; ~~[and]~~

54 (3) company name, property owner or operators, if known; ~~[and]~~

55 (4) description of the fugitive dust sources; ~~[and]~~

56 (5) wind speed and direction (explain method of determining the wind speed, i.e., hand-held
57 anemometer); and

58 (6) sky conditions.

1 D. ~~[At the beginning of the observation period,]~~ The observer shall record the time of day when the
2 observation begins. The observer shall start the first stopwatch to begin recording the observation period and shall
3 observe along the property line. With the second stopwatch, the observer shall record the length of time [dust
4 emissions are visible leaving] visible fugitive dust is crossing the property line. The observer shall stop the second
5 stopwatch when the visible [dust emissions stop] fugitive dust is no longer detected crossing the property line. The
6 observer shall continue this procedure during the continuous one-hour observation period or until the [total] visible
7 fugitive dust emission time [establishes] totals 15 minutes or greater during the continuous one-hour observation
8 period, which is a violation of [this part] 20.11.20 NMAC. The observer shall record the [actual] time of day when
9 the observations [ended] ends. If the observer determines that the visible fugitive dust being observed is of an
10 intensity that may cause immediate danger to human health or safety, then, before the observation period is
11 completed, the observer shall attempt to immediately contact the responsible person, permittee or owner.

12 ~~[E. — Observer breaks: The observer may take a break periodically, but for no more than 15 minutes.~~
13 ~~During the break, the observer shall stop the both stopwatches and shall record the actual time of day from the start~~
14 ~~to the end of the break.]~~

15 [20.11.20.26 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

16
17 **20.11.20.27 ENFORCEMENT:**

18 A. ~~[It is the responsibility of all persons to whom this part applies to]~~ All persons shall use control
19 measures that are effective in maintaining compliance with [this part] 20.11.20 NMAC. Violation of a fugitive dust
20 control permit or fugitive dust control plan approved by the department is a violation of 20.11.20 NMAC. If a
21 violation occurs or is occurring, the department may issue a verbal warning, issue a written warning, [require a
22 violation to pay] initiate an administrative enforcement action and assess an administrative civil penalty, and [may]
23 take all other actions authorized by law and equity, including issuing a stop work order as authorized by [this part]
24 20.11.20.27 NMAC.

25 B. If the department determines a person has violated or is violating a requirement or prohibition of
26 ~~[this part] 20.11.20 NMAC~~, the department may initiate an administrative enforcement action and assess an
27 administrative civil penalty for a past or current violation, or both, as authorized by 74-2-12.A.(1) NMSA. As also
28 authorized by ~~[74-2-12 NMSA]~~ 74-2-12.A.(2) NMSA and 74-2-12.1 NMSA, the department may commence a civil
29 action in New Mexico district court for appropriate relief, including a temporary or permanent injunction. In
30 addition, as authorized by 74-2-14 NMSA, the department also may commence or cause a criminal action to be
31 commenced. ~~[Violation of a fugitive dust control permit or fugitive dust control plan approved by the department is~~
32 ~~a violation of this part.]~~

33 C. As authorized by ~~[74-2-12 NMSA]~~ 74-2-12.H NMSA, in connection with an administrative
34 enforcement action, the Director may issue subpoenas for attendance and testimony of witnesses and the production
35 of relevant papers, books and documents and may adopt rules for discovery procedures.

36 D. If a person (requestor) asks the department for an informal review meeting to consider the
37 department's decision regarding an administrative compliance order in the manner provided by 20.11.20.27 NMAC,
38 the process shall not extend the 30-day deadline for submitting a written request to the department director
39 requesting a public hearing as provided by 74-2-12.C NMSA. If a person receives [a notice of a proposed] an
40 administrative [enforcement action] compliance order from the [division] department, that person ("requestor") may
41 request an informal review meeting to discuss the [division's proposed] administrative [enforcement action]
42 compliance order. The request shall be in writing or on a form provided by the [division] department. [Within five
43 working days after the requestor has received the proposed administrative enforcement action,] The requestor shall
44 deliver the written request for an informal review meeting to the director and [the] a division manager within five
45 business days after the requestor has received the administrative compliance order. Within five [working] business
46 days of receiving the request, [the] a division manager or designee shall hold an informal review meeting with the
47 requestor and a division representative (e.g. division manager, compliance officer, or person issuing the [action]
48 order) in an attempt to resolve the administrative [enforcement action] compliance order. Within two [working]
49 business days after the informal review meeting, [the] a division representative shall [issue a] mail, hand deliver or
50 deliver by facsimile a statement to the requestor with the department's final decision regarding the [action]
51 administrative compliance order and the reasons for the decision. If the requestor is adversely affected by the final
52 decision made by the [division representative] department, the requestor may follow the procedures described in [the
53 following] Subsection E of 20.11.20.27 NMAC.

54 E. A person who receives ~~[a proposed] an~~ administrative ~~[enforcement action] compliance order~~ and
55 chooses not to sign the compliance ~~[agreement] order~~ or similar document ~~[proposed]~~ as requested by the ~~[division]~~
56 department, and comply with its terms, may request a hearing consistent with ~~[74-2-12 NMSA]~~ 74-2-12.C NMSA.
57 The decision following the hearing may be appealed consistent with ~~[74-2-9 NMSA]~~ 74-2-9.A NMSA.

1 F. Payment of an administrative civil penalty [~~authorized by this part~~] shall not prevent the
2 department from taking additional enforcement actions, [~~including suspension or revocation of a permit,~~] if the
3 violation is repeated or an additional violation occurs. Payment of an administrative civil penalty for a prior or
4 [~~another~~] additional violation shall not be a defense to [~~any additional~~] a subsequent action taken by the department
5 to resolve an additional violation. Actions by the department may include suspension or revocation of a permit, as
6 provided by [~~72-2-12 NMSA~~] 74-2-12.B NMSA, and issuance of a stop work order.

7 G. [~~The department may issue a stop work order, which shall be effective 24 hours after the person,
8 permittee, owner, operator, or responsible person or official named in a valid permit receives the stop work order,
9 unless an earlier deadline for stopping work or other activities is imposed by the department for good reason. The
10 stop work order shall remain in effect until the person, permittee, owner, operator, or responsible person or official
11 named in a valid permit demonstrates to the satisfaction of the department that the property and activities of the
12 person, permittee, owner, operator or responsible person or official named in a valid permit shall comply with the
13 provisions of this part.~~]

14 The permittee or responsible person as identified in the permit shall take all actions required by the permit
15 to prevent a violation of 20.11.20 NMAC, including stopping active operations, if necessary. If the permittee or
16 responsible person as identified in the permit fails to take all required actions, the owner or operator, if different,
17 shall take all actions required to prevent or satisfactorily resolve a violation of 20.11.20 NMAC, including stopping
18 active operations, if necessary.

19 H. The department may issue a stop work order, which shall suspend all active operations except for
20 the required application of reasonably available control measures. The department also may revoke a permit issued
21 by the department if the permittee fails to implement the reasonably available control measures required by the
22 fugitive dust control permit.

23 I. If a person fails to obtain a permit as required by 20.11.20 NMAC, the department may issue a
24 stop work order which shall require all active operations at a site to stop except for application of reasonably
25 available control measures.

26 J. The stop work order, which shall be effective 24 hours after the person, permittee, owner,
27 operator, or responsible person named in a permit receives the stop work order, unless an earlier deadline for
28 stopping work or other activities is imposed by the department for good reason. The stop work order shall remain in
29 effect until the person, permittee, owner, operator, or responsible person named in the permit demonstrates to the
30 satisfaction of the department that the activities of the person, permittee, owner, operator or responsible person
31 named in the permit comply with the provisions of 20.11.20 NMAC.
32 [20.11.20.27 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

34 **20.11.20.28 PUBLIC OUTREACH AND TRAINING:** [~~The department shall provide or approve public
35 education regarding reducing fugitive dust, and the department shall implement a program to provide training at no
36 cost to individuals who are or may in the future be required to comply with provisions of this part. Approximately
37 twice per year, the department shall provide or approve training workshops on fugitive dust and its control to
38 persons who conduct or participate in projects involving active operations or any other interested person. When a
39 person attends the training and successfully passes a test, the department or approved trainer shall certify that the
40 person has successfully completed the training and provide documentation that the person is certified. Certifications
41 shall be valid for two years.~~]

42 A. The department shall provide or approve public education regarding reducing fugitive dust. The
43 department shall maintain an electronic information system using the Internet in order to provide access to the
44 general public and regulated business community regarding fugitive dust control programs, activities, regulations,
45 regulatory requirements, forms and information.

46 B. The department shall implement a program to provide training at no cost to individuals who are or
47 may be required to comply with provisions of 20.11.20 NMAC. Approximately twice per year, the department shall
48 provide or approve training workshops on fugitive dust and its control to persons who conduct or participate in
49 projects involving active operations and to other interested persons. When a person attends the training and
50 successfully passes a test, the department or approved trainer shall issue a certificate stating that the person has
51 successfully completed the training.

52 [20.11.20.28 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

54 **20.11.20.29 COMPLAINTS:** The department shall respond to complaints from residents, businesses and
55 others in a timely manner, but in no case shall the initial response [~~be made in less than 30 days~~] take longer than
56 three business days.

57 [20.11.20.29 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04, 3/17/08]

1 **HISTORY OF 20.11.20 NMAC:**
2 **Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of
3 public records - state records center and archives.
4 Regulation No. 8, Airborne Particulate Matter, filed 3/24/82.
5 Regulation No. 8, Airborne Particulate Matter, filed 2/17/83.
6
7 **History of Repealed Material:** 20 NMAC 11.20, Airborne Particulate Matter (filed 5/29/96); repealed 3/1/04.
8
9 **Other History:** Regulation No. 8, Airborne Particulate Matter; filed 2/17/83 was renumbered and reformatted into
10 first version of the New Mexico Administrative Code as 20 NMAC 11.20, Airborne Particulate Matter, effective
11 12/01/95.
12 20 NMAC 11.20, Airborne Particulate Matter, filed 10/27/95 replaced by 20 NMAC 11.20, Airborne Particulate
13 Matter, effective 07/01/96.
14 20 NMAC 11.20, Airborne Particulate Matter, filed 5/29/96 renumbered, reformatted and replaced by 20.11.20
15 NMAC, Fugitive Dust Control, effective 3/1/04.
16