

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 2 FEES

20.11.2.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[20.11.2.1 NMAC - Rp, 20 NMAC.11.02.I.1, 7/1/2001]

20.11.2.2 SCOPE:

A. Applicability:

- (1) any person required to obtain a permit pursuant to 20.11.42 NMAC;
- (2) any person required to obtain a permit pursuant to 20.11.41 NMAC;
- (3) any person with a valid registration or permit issued pursuant to 20.11.40 NMAC, 20.11.41 NMAC, or 20.11.42 NMAC;
- (4) any person required to obtain a fugitive dust control permit pursuant to 20.11.20 NMAC, Fugitive Dust Control;
- (5) any person required to provide notification regarding removing regulated asbestos containing material pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources;
- (6) any person requesting professional or administrative services or copies of public records; and
- (7) any person who requests a variance or a hearing before the board.

B. Exempt: 20.11.2 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque/Bernalillo county air quality control board lacks jurisdiction.

C. Variance: Any person may request a timely variance from the requirements of 20.11.2 NMAC in accordance with Variance Procedures, 20.11.7 NMAC, if allowed by federal, state or local laws and regulations.
[20.11.2.2 NMAC - Rp, 20 NMAC 11.02.I.2 & 20 NMAC 11.02.I.8, 7/1/2001; A, 3/1/04]

20.11.2.3 STATUTORY AUTHORITY: 20.11.2 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 and 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-3 and Section 9-5-1-4.
[20.11.2.3 NMAC - Rp, 20 NMAC 11.02.I.3, 7/1/2001; A, 3/1/04]

20.11.2.4 DURATION: Permanent.
[20.11.2.4 - Rp, 20 NMAC 11.02.I.4, 7/1/2001]

20.11.2.5 EFFECTIVE DATE: July 1, 2001, unless a later date is cited at the end of a section or paragraph.
[20.11.2.5 NMAC - Rp, 20 NMAC 11.02.I.5, 7/1/2001]

20.11.2.6 OBJECTIVE:

- A.** To implement the requirements of 74-2-7 NMSA by establishing:
- (1) reasonable fees to cover the cost of reviewing and acting on any permit application received by the department;
 - (2) reasonable fees to cover the cost of implementing and enforcing the terms and conditions of any permit issued by the department; and
 - (3) a schedule of operating permit fees consistent with Section 502(b)(3) of the Clean Air Act and the joint air quality control board ordinances.
- B.** To establish reasonable fees to cover the cost of variance procedures and permit-related administrative hearings before the board;
- C.** To implement the requirements of Section 507 of the federal Clean Air Act by establishing adequate funding for a small business stationary source technical and environmental compliance assistance program;
- D.** To establish reasonable fees to cover the administrative expenses incurred by the department in implementing and enforcing the provisions of the New Mexico Air Quality Control Act, the joint air quality control board ordinances, and the Albuquerque/Bernalillo county air quality control board regulations; and

E. 20.11.2 NMAC is permanent. A financial audit of the division shall be performed for city of Albuquerque fiscal year 2005 (July 1, 2004 through June 30, 2005). The results of the audit shall be reported to the air board during city fiscal year 2006.
[20.11.2.6 NMAC - Rp, 20 NMAC 11.02.I.6, 7/1/2001; A, 3/1/04]

20.11.2.7 DEFINITIONS: Throughout 20.11.2 NMAC, the terms defined shall have the following meanings. For the purpose of 20.11.2 NMAC, if there is any apparent conflict between the meaning of a definition in 20.11.2 NMAC and a definition in another part, the definition in 20.11.2 NMAC shall prevail and apply.

A. "Allowable emission rate" means the most stringent emission limit that has been established by a permit issued by the department or the source's potential-to-emit.

B. "Efficiency control factor" means a factor used in conjunction with a fugitive dust source classification to determine the annual fee per acre to be paid for a programmatic permit issued pursuant to 20.11.20 NMAC. The four fugitive dust source classifications pertaining to programmatic permits are "no impact source", "low impact source", "moderate impact source" and "high impact source" which are defined in 20.11.2.7 NMAC.

C. "Emissions unit" means any part or activity of a stationary or portable source that emits or has the potential to emit any fee pollutant.

D. "Fee pollutant" means:

- (1) sulfur dioxide (SO_x);
- (2) nitrogen dioxide based on total oxides of nitrogen (NO_x);
- (3) carbon monoxide (CO);
- (4) particulate matter with an aerodynamic diameter less than or equal to 30 micrometers (TSP);
- (5) any volatile organic compound as defined in 40 CFR 51.100(s), as amended;
- (6) any hazardous air pollutant listed pursuant to 112(b) of the federal Clean Air Act;]
- (7) any regulated substance listed pursuant to Section 112(r) of the federal Clean Air Act; and
- (8) any other pollutant determined by the board after public hearing.

E. "Fugitive emissions" means emissions that cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

F. "High impact source" means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 10 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a high impact source based on professional judgment, sound technical information, or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. The purpose of classifying a fugitive dust source as a high impact source is so the programmatic permit fees can be calculated for a programmatic permit issued pursuant to 20.11.20 NMAC. For a high impact source, the applicable efficiency control factor for calculating fees shall be 0.9.

G. "Low impact source" means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 90 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a low impact source based on professional judgment, sound technical information, or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. The purpose of classifying a fugitive dust source as a low impact source is so the programmatic permit fees can be calculated for a programmatic permit issued pursuant to 20.11.20 NMAC. For a low impact source, the applicable efficiency control factor for calculating fees shall be 0.1.

H. "Major source" shall have the meaning defined in 40 CFR 71.2.

I. "Moderate impact source" means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 50 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a moderate impact source based on professional judgment, sound technical information, or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. The purpose of classifying a fugitive dust source as a moderate impact source is so the

programmatic permit fees can be calculated for a programmatic permit issued pursuant to 20.11.20 NMAC. For a moderate impact source, the applicable efficiency control factor for calculating fees shall be 0.5.

J. “No impact source” means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 100 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a no impact source based on professional judgment, sound technical information, or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. Land that is classified as a no impact source is not required to obtain a programmatic permit issued under 20.11.20 NMAC and is not required to pay a programmatic permit fee for land classified as a no impact source.

K. “Potential-to-emit” or “PTE” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of source to emit an air pollutant, including air pollution control equipment, restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if integral to the process or the limitation is federally enforceable through permit or regulation. Any limitation on emissions due to process design must be unchanging and unavoidable physical constraints. The potential-to-emit for nitrogen oxide shall be based on total oxides of nitrogen.

L. “Qualified small business” means:

- (1) a business that has 100 or fewer employees;
- (2) a small business concern as defined by the federal Small Business Act;
- (3) a source that does not emit more than 50 tons per year of any regulated air pollutant, or 75 tons per year of all regulated air pollutants; and
- (4) a facility that is not a major source of hazardous air pollutants.

M. “Regulated air pollutant” means the following:

- (1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;
- (2) any pollutant for which a national, state or local ambient air quality standard has been promulgated;
- (3) any pollutant that is subject to any standard established in Section 111 of the federal Act;
- (4) any Class I or II substance subject to any standard established in Title VI of the federal Act; or
- (5) any pollutant subject to a standards or requirements established in Section 112 of the federal Act,

including:

- (a) any pollutant subject to requirements under Section 112(j) of the federal Act; and
- (b) any pollutant for which the requirements of Section 112(g)(2) of the federal Act have been met, but only with respect to the individual source subject to the requirements.

N. “State air toxic review” means a case-by-case permit application review of the potential emissions of toxic air pollutants listed in 20.2.72 NMAC, Construction Permits, Section 20.2.72.502 NMAC, Toxic Air Pollutants and Emissions.

O. “Stationary source with de minimis emissions” means a source as defined in 20.11.41 NMAC. [20.11.2.7 NMAC - Rp, 20 NMAC 11.02.I.7, 7/1/2001; A, 3/1/04]

20.11.2.8 SAVINGS CLAUSE: Any amendment to 20.11.2 NMAC that is filed with the state records center shall not affect actions pending for violation of a federal or state statute or regulation, a city or county ordinance, or any board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed. [20.11.2.8 NMAC - Rp, 20 NMAC 11.02.I.9, 7/1/2001]

20.11.2.9 SEVERABILITY: If any section, paragraph, sentence, clause or word of 20.11.2 NMAC or federal, state or local standard incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of the remaining provisions of 20.11.2 NMAC. [20.11.2.9 NMAC - Rp, 20 NMAC 11.02.I.10, 7/1/2001; A, 3/1/04]

20.11.2.10 DOCUMENTS: Documents cited and incorporated in 20.11.2 NMAC may be viewed at the Albuquerque environmental health department, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102. [20.11.2.10 NMAC - Rp, 20 NMAC 11.02.I.11, 7/1/2001; A, 3/1/04]

20.11.2.11 GENERAL PROVISIONS:

A. At the time of application, any person, including a federal, state or local governmental agency, who files an application pursuant to 20.11.41 NMAC, for an initial air quality application review and authority to proceed with construction or any person requesting to modify an existing air quality permit shall pay the permit fee required by 20.11.2 NMAC.

B. Any new or existing stationary source that meets the applicability requirements of 20.11.2 NMAC shall pay an annual emission fee based on the source's potential-to-emit. Sources wishing to reduce their potential-to-emit may do so at any time through the provisions of 20.11.41 NMAC.

C. At the time of submittal, any person filing an application for a fugitive dust control permit with the department pursuant to 20.11.20 NMAC, Fugitive Dust Control, shall pay the applicable fee required by 20.11.2 NMAC.

D. At the time of notification, any person notifying the department pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Source, of the removal of regulated asbestos containing material shall pay the applicable fee required by 20.11.2 NMAC.

E. No application will be reviewed or permit issued unless the owner/operator provides documentary proof satisfactory to the department that either all applicable fees have been paid as required by 20.11.2 NMAC, or the owner/operator has been granted a variance in accordance with 20.11.7 NMAC, Variance Procedures.

F. All permit fees required to be paid at the time of application shall be paid by check or money order payable to the "city of Albuquerque, permits program (Fund 242)" and either be delivered in person to the environmental health department, finance section, 3rd floor, room 3023, Albuquerque/Bernalillo county government center (city hall), One Civic Plaza NW, Albuquerque, NM, or mailed to Attn: Finance Section, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. The finance section then shall send a receipt to the applicant. The applicant shall attach a copy of the receipt issued by the finance section to the application as proof of payment. The air quality division cannot accept direct payments.

G. No person required to pay an annual emission fee pursuant to 20.11.2 NMAC shall be in compliance with their permit unless all applicable fees are paid as required by 20.11.2 NMAC.

H. No fee required by 20.11.2 NMAC shall be refunded without the written approval of the director. When determining the amount of the refund, the director may deduct a reasonable professional service fee to cover the costs of staff time involved in processing a permit or request.
[20.11.2.11 NMAC - N, 7/1/2001; A, 3/1/04]

20.11.2.12 20.11.41 NMAC, AIR QUALITY PERMIT FEES; FEE CALCULATIONS AND PROCEDURES

A. Air quality permits for minor and area sources: sources applying for an air quality permit pursuant to 20.11.41 NMAC, shall pay the applicable fee found in Section 20.11.2.18 NMAC.

B. Case-by-case air quality review prior to the construction of a stationary source:

(1) Case-by-case air quality application review fees shall be calculated based on the proposed source's potential-to-emit fee pollutants. Federally approved state implementation plan limitations may be used to determine a source's potential-to-emit.

(2) Fugitive emissions shall be included in the source's potential-to-emit.

(3) Emissions from operations determined by the department to be insignificant activities shall not be included in the calculation.

(4) For each fee pollutant, calculate the potential-to-emit for each proposed emission unit to the nearest tenth of a ton. Total each of the fee pollutants from each emission unit and express the value in tons per calendar year as a whole number. When rounding, if the number after the decimal point is less than 5, the whole number remains unchanged. If the number after the decimal point is 5 or greater, the whole number shall be rounded up to next whole number.

(5) The application review fee shall be determined by comparing the source's calculated potential-to-emit for the single highest fee pollutant in tons per year with the fee schedule found in Section 20.11.2.18 NMAC.

(6) In addition to the application review fees, a source proposing to construct any emission unit or units that must comply with the provisions of 20.11.60 NMAC, Permitting in Nonattainment Areas, 20.11.61 NMAC, Prevention of Significant Deterioration, 20.11.62 NMAC, Acid Rain, 20.11.63 NMAC, New Source Performance Standards for Stationary Sources, or 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, also shall pay the applicable federal program review fees listed in Section 20.11.2.18 NMAC.

(7) Example: A company proposes to build a facility with a NSPS boiler with a potential-to-emit of greater than 100 tons per year of NOx. From the fee schedule found in Section 20.11.2.18 NMAC, the company will be required to pay an initial air quality review fee of \$5,000.00 with an addition federal program review fee of \$1,000.00 for the NSPS boiler, for a total fee of \$6,000.00. The review fee shall be submitted at the time of application in accordance with the procedures found in Subsections E and F of 20.11.2.11 NMAC.

(8) Sources submitting an application for the removal of regulated asbestos containing material pursuant to 20.11.64 NMAC shall comply with the provisions of 20.11.2.14 NMAC.

C. Permit modifications:

(1) At the time of application, any source proposing to modify an existing air quality permit shall pay the applicable fee found in Section 20.11.2.18 NMAC.

(2) Any proposed modifications to an existing air quality permit that must comply with the provisions of 20.11.60 NMAC, Permitting in Non-Attainment Areas, 20.11.61 NMAC, Prevention of Significant Deterioration, 20.11.62 NMAC, Acid Rain, 20.11.63 NMAC, New Source Performance Standards for Stationary Sources, or 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, also requires the applicant to pay the applicable federal program review fee, but only with respect to the individual emission unit subject to the requirement.

D. Qualified small businesses shall pay one-half of the calculated case-by-case air quality review fees prior to adding any federal program review or state toxic review fees.
[20.11.2.12 NMAC - Rp, 20 NMAC 11.02.II.1, 7/1/2001; A, 3/1/04]

20.11.2.13 ANNUAL EMISSION FEES; FEE CALCULATIONS AND PROCEDURES

A. By June 1 of each year, the department shall send each owner/operator a letter stating the fee amount owed. The owner/operator has 45 days from receipt of the letter to contact the department to request a correction to the records or submit a complete application within 45 days of receipt of the letter to modify an existing permit reducing the source's allowable emission rate.

B. Starting August 1 of each year, each owner/operator shall be sent an official invoice by the city of Albuquerque stating the annual emission fee due, which the owner/operator shall pay consistent with the directions stated in the invoice. If the department does not send the owner/operator an annual letter or invoice stating the annual emission fee that is due, the owner/operator is not authorized to continue operating the source without having first paid the applicable annual emission fee.

C. As required by 74-2-16 NMSA, all monies received pursuant to Section 20.11.2.13 NMAC shall be deposited in the city of Albuquerque, permits program (Fund 242).

D. Calculating annual emission fees:

(1) For each source, the potential-to-emit for each fee pollutant shall be totaled and expressed in tons per calendar year as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to next whole number.

(2) The sum of each fee pollutant shall be multiplied by the appropriate annual emission fee listed in Section 20.11.2.18 NMAC then totaled, to determine the annual emission fee due.

(3) The source shall pay either the minimum annual emission fee or the calculated emission fee whichever is greater.

E. Sources wishing to reduce their potential-to-emit may apply for a permit or modify their existing permit consistent with the provisions of 20.11.41 NMAC.

[20.11.2.13 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04]

20.11.2.14 FILING AND INSPECTION FEES FOR THE REMOVAL OF REGULATED ASBESTOS CONTAINING MATERIAL; FEE CALCULATIONS AND PROCEDURES

A. At the time of notification, a filing and inspection fee shall be paid by the owner/operator removing regulated asbestos containing material pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, and the federal regulations incorporated therein.

B. The filing and inspection fee shall be calculated by multiplying the asbestos unit (AU) by the applicable fee in 20.11.2.18 NMAC. Equation 1 shall be used to calculate the total asbestos units (AU) and amount due:

$$(1) \text{ Total Due} = [(SF / 160) + (LF / 260) + (CF / 35)] \times \text{AU (Equation 1)}$$

(2) Where: SF = square feet of asbestos containing material to be removed; LF = linear feet of asbestos containing material to be removed; CF = cubic feet of asbestos containing material to be removed; and AU = asbestos unit.

(3) Example: A contractor proposes to remove 320 square feet (SF), 260 linear feet (LF) and 70 cubic feet (CF) of regulated asbestos containing material.

(4) From the example above: SF=320; LF=260; CF=70; and AU=\$21.00 (from Section 20.11.2.18 NMAC).

(5) From Equation 1: $[(SF / 160) + (LF / 260) + (CF / 35)] \times AU = [(320 / 160) + (260 / 260) + (70 / 35)] \times \$21.00 = (2 + 1 + 2) \times \$21.00 = 5 \times \$21.00 = \105.00

(6) Result: The contractor must pay \$105.00 at the time of notification.

C. All fees due pursuant to Section 20.11.2.14 NMAC shall be paid in accordance with the procedures found in Subsections D, E and F of 20.11.2.11 NMAC. [20.11.2.14 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04]

20.11.2.15 FEES FOR FUGITIVE DUST CONTROL PERMITS; FEE CALCULATIONS AND PROCEDURES

A. Each source required by 20.11.20 NMAC to obtain a fugitive dust control permit shall pay the total fee due at the time the permit application is submitted to the department.

B. The filing and review fee for a non-programmatic fugitive dust control permit:

- (1) for projects that are less than 2 acres is \$250.00;
- (2) for projects that are at least 2 acres but less than 5 acres is \$350.00;
- (3) for projects that are at least 5 acres but less than 15 acres is \$450.00;
- (4) for projects that are at least 15 acres or more is \$550.00.

C. To calculate the non-programmatic dust control permit inspection fee, which is in addition to the above non-programmatic permit filing and review fee, multiply the acreage on which active operations or disturbance will occur by \$100.00 per acre. The number of acres must be expressed as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to the next whole number. Rounding of acres shall occur before the fees are calculated.

D. To calculate the programmatic fugitive dust control permit fee, multiply the acreage upon which routine maintenance or routine ongoing active operations will occur by the applicable emission control factor for a low impact source, moderate impact source, or high impact source as defined in Section 20.11.2.7 NMAC and then multiply by \$110.00. The air quality division (division) has a "source classification guidebook" that includes nonbinding examples of how to classify a no impact source, low impact source, a moderate impact source, and a high impact source. The number of acres must be expressed as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to the next whole number. Rounding of acres shall occur before the fees are calculated using the applicable emission control factor in Section 20.11.2.7 NMAC. No filing and review fee is required for a programmatic permit. The total programmatic permit fee is:

- (1) the fee calculated for any low impact source acres; plus
- (2) the fee calculated for any moderate impact source acres; plus
- (3) the fee calculated for any high impact source acres. However, the maximum combined fee shall not exceed \$10,000.00.

E. No fee shall be paid for "no impact source" acreage.

F. Example: the application for a programmatic permit includes a total of 20 acres, of which 2 acres are no impact source acres, 8 acres are low impact source acres, 5 acres are moderate impact source acres, and 5 acres are high impact source acres. To calculate the programmatic permit fee: 2 no impact source acres $\times 0 = 0$ acres. 8 low impact source acres $\times 0.1 = 0.8$ acre. 5 moderate impact acres $\times 0.5 = 2.5$ acres. 5 high impact source acres $\times 0.9 = 4.5$ acres. 0 acres, plus 0.8 acre, plus 2.5 acres, plus 4.5 acres = a total of 7.8 acres. 7.8 acres \times \$110.00 per acre = a total programmatic permit fee of \$858.00.

G. The division will begin work on the programmatic permit program immediately after the adoption of 20.11.20 NMAC, Fees. All applicants shall obtain a programmatic permit by July 1, 2004, which is the date upon which all programmatic permits shall become effective during the first annual permit cycle. After June 30, 2005, the term of each programmatic permit will be from July 1 through the following June 30, and annual programmatic permit fees shall be paid for each annual term. When a programmatic permit application is submitted, the applicant may either ask the division to determine the fee to be paid by the applicant or the applicant may submit a proposed

fee calculation. No later than eight working days after the division has received the programmatic permit application and the proposed fee calculation, the division shall notify the applicant in writing of the total fees due. The applicant and the department may agree in writing to extend the deadline for the department to issue the programmatic permit in order to attempt to resolve any pending issues, including any dispute over the source classification or fee calculation. The total fees due must be paid to the department before the department will issue a programmatic permit. A permit applicant may challenge the department's determination of source classification or fee calculation for a fugitive dust control permit by following the procedures established by Section 20.11.20.25 NMAC.

H. All fees due pursuant to Section 20.11.2.15 NMAC shall be paid in accordance with the procedures found in Subsections C, E, and F of Section 20.11.2.11 NMAC.
[20.11.2.15 NMAC - N, 7/1/2001; A, 3/1/04]

20.11.2.16 FEE ERRORS, CORRECTIONS AND REFUNDS

A. For permits other than fugitive dust control permits, within 30 days of receiving an invoice from the city, any person who does not agree with the amount due may request a review by the director to correct any errors or challenge the basis upon which the fee was computed. If the director has not received a written request or challenge within 30 days after the payor receives the invoice, the invoice shall be final.

B. If fees are due at the time of application, the payor must pay the required fee, and then request a review within 30 days of payment.

C. All written requests for review shall be sent to: Division Manager, Air Quality Division, Environmental Health Department, Air Quality Division, P.O. Box 1293, Albuquerque, NM 87103

D. The request for review must include:

- (1) the name of the owner/operator, address and telephone number;
- (2) the dollar amount of the alleged error; and
- (3) a description of the alleged error and any other information the payor believes may support the

claim.

E. Within 30 days of receiving the request for review, the director shall audit the account and, either:

- (1) amend the invoice or bill and refund any money due the payor; or
- (2) state the invoice or bill is correct.

F. The director may confer with the payor to obtain additional information during the audit period.

G. Within 10 working days of the director's decision concerning the review, the decision shall be sent by certified mail to address provided by the payor.

H. If a refund is due, the department shall refund any money due consistent with the policies and procedures of the city of Albuquerque.

I. The director's decision may be appealed to the board.

[20.11.2.16 NMAC - N, 7/1/2001; A, 3/1/04]

20.11.2.17 FAILURE TO PAY

A. It shall be a violation of 20.11.2 NMAC to fail to pay any fee required by 20.11.2 NMAC, a director's decision, or a board regulation.

B. Stating an invoice is in error shall not be a defense to violation of Section 20.11.2.17 NMAC.

C. In addition to paying past due fees, the payor shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with the section of the Internal Revenue Code relating to computation of interest on underpayment of federal taxes.

[20.11.2.17 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04]

20.11.2.18 FEE SCHEDULE

A. Annual emission fees: Sources issued a registration or permit pursuant to 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, or 20.11.61 NMAC shall pay a minimum annual emission fee of \$150.00 or the annual emission fee calculated consistent with Section 20.11.2.13 NMAC, which ever is greater. The following fee pollutant rates shall be used in calculating the annual emission fee, unless otherwise listed:

- (1) non-hazardous fee pollutants: \$31.00 per ton;
- (2) hazardous fee pollutants (non-major sources): \$31.00 per ton;
- (3) hazardous fee pollutants (major sources): \$250.00 per ton; and
- (4) annual emission fees for specific source categories:
 - (a) auto body repair and painting: \$150.00;

- (b) chromium electroplating: \$150.00;
- (c) degreasers using organic solvents:
 - (i) non-halogenated solvents using less than 2,200 gallons of any one solvent-containing material or 5,400 gallons or more of any combination of solvent-containing materials: \$150.00; and
 - (ii) halogenated solvents using less than 1,200 gallons of any one solvent-containing material or 2,900 gallons or more of any combination of solvent-containing materials: \$150.00;
- (d) dry cleaners (non-major): \$150.00;
- (e) emergency generators: \$150.00 or \$31.00 per ton, whichever is greater;
- (f) gasoline service and fleet stations: \$250 or \$31.00 per ton, which ever is greater;
- (g) stand alone natural gas or distillate fueled fired boilers less than 10 million BTU used exclusively for residential, commercial or institutional heating and hot water: no charge;
- (h) printing, publishing and packaging operations:
 - (i) sheetfed (nonheatset) offset lithography using less than 7,125 gallons of clean solvent and fountain solution additives per year: \$150.00;
 - (ii) nonheatset web offset lithography using less than 7,125 gallons of solvent and fountain solution additive per year: \$150.00;
 - (iii) heatset web offset lithography using less than 50,000 pounds of ink, cleaning solvent, and fountain solution additives: \$150.00;
 - (iv) screen printing using less than 7,125 gallons of total solvent used including solvent-based inks, cleaning solvents, adhesives and coatings: \$150.00;
 - (v) flexography (water-based or UV-cured inks, coating and adhesives) using less than 200,000 pounds total of inks, coatings and adhesives: \$150.00;
- (i) soil and/or water remediation operations: \$150.00; and
- (j) stationary sources with de minimis emissions: no charge.

B. Air quality application review fees for sources requiring permits pursuant to 20.11.40 NMAC or 20.11.41 NMAC:

- (1) auto body repair and painting: \$500.00;
- (2) dry cleaners: \$500.00;
- (3) emergency generators: \$500.00;
- (4) generic coating and abrasive operations: \$500.00;
- (5) other fueling facilities receiving fuel by truck or rail (non-NSPS): \$1000.00;
- (6) non-NSPS boilers (greater than 10 million BTU): \$500.00;
- (7) printing and packaging operations: \$500.00;
- (8) retail and fleet gasoline service stations: \$500.00; and
- (9) soil/water remediation systems: \$1000.00.

C. Case-by-case air quality application review fees for sources requiring permits pursuant to 20.11.40 NMAC or 20.11.41 NMAC (based on a source's potential-to-emit for the single highest pollutant):

- (1) proposed sources with a potential-to-emit equal to or greater than one ton per year and less than five tons per year: \$500.00;
- (2) proposed sources with a potential-to-emit equal to or greater than 5 tons per year and less than 25 tons per year: \$1,000.00;
- (3) proposed sources with a potential-to-emit equal to or greater than 25 tons per year and less than 50 tons per year: \$2,000.00;
- (4) proposed sources with a potential-to-emit equal to or greater than 50 tons per year and less than 75 tons per year: \$3,000.00;
- (5) proposed sources with a potential-to-emit equal to or greater than 75 tons per year and less than 100 tons per year: \$4,000.00; and
- (6) proposed sources with a potential-to-emit equal to or greater than 100 tons per year: \$5,000.00.

D. Federal program and state toxic air pollutant application review fees in addition to the air quality application review fees:

- (1) 40 CFR 60 standards: \$1,000.00;
- (2) 40 CFR 61 standards: \$1,000.00;
- (3) 40 CFR 63 standards:
 - (a) promulgated standards: \$2,000.00;
 - (b) case-by-case MACT review: \$10,000.00;
- (4) PSD/non-attainment review: \$5,000.00;

- (5) acid rain review: \$5,000.00; and
- (6) state toxic air pollutant review: \$500.00.

E. Permit modifications:

- (1) P2 modifications: no charge;
- (2) minor/flexible permit modifications: \$1,000.00; and
- (3) major modifications: \$5,000.00;

F. Portable source relocation fee: \$250.00;

G. Administrative modifications to existing permit: \$100.00;

H. Asbestos unit (AU): \$21.00;

I. Administrative fees:

- (1) Professional services fee: \$75.00 per staff hour;
- (2) Photocopying and other copies of public records: as provided by the New Mexico Inspection of Public Records Act and by the applicable city of Albuquerque ordinance and administrative instruction number 1-7.
- (3) Regulation compilation: \$20.00; and
- (4) Public records research fee: \$50.00 per staff hour. However, the charge for copying public records shall not include a separate charge for staff time for locating and copying the documents.

J. Variance request fees: any person who petitions for a variance shall pay a fee of \$1,500.00, unless the fee is determined by the board at a hearing to impose an undue economic burden on the petitioner.

K. Board hearing fees: Any person who requests a hearing before the board to challenge the issuance of a permit, the terms of a permit or permit modification, the department's refusal to issue a permit, or the department's determination of a source classification or fee calculation for a fugitive dust control permit shall be charged a fee of \$1,000.00, unless the \$1000.00 fee for the hearing process is determined by the board at a hearing to impose an undue economic burden on the petitioner.

[20.11.2.18 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04]

HISTORY of 20.11.2 NMAC:

Pre-NMAC history:

Material in the part was derived from that previously filed with the commission of public records – state records center and archives under:

Resolution 1, Air Pollution Control Regulations of the Albuquerque/Bernalillo County Air Quality Control Board, filed 8-06-71;

Regulation 1, Air Pollution Control Regulations, filed 6-06-73;

Regulation 1, Air Pollution Control Regulations, filed 7-19-73;

Regulation 1, Air Pollution Control Regulations, filed 3-21-77;

Regulation No. 21, Permit Fees, filed 3-24-82;

Regulation No. 21, Permit Fees, filed 8-19-83;

Regulation No. 21, Permit Fees, filed 3-01-94;

Regulation No. 21, Permit Fees, filed 12-16-94.

History of repealed material: 20 NMAC 11.02, Permit Fees, filed 10-27-95.

Other history: Regulation No. 21, Permit Fees, filed 12-16-94 renumbered and reformatted to 20 NMAC 11.02, Permit Fees, filed 10-27-95;

20 NMAC 11.02, Permit Fees, filed 10-27-95 replaced by 20.11.2 NMAC, Permit Fees, effective 7/1/2001.