

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**  
**PART 45 STATIONARY SOURCE CONFORMITY**

**20.11.45.1 ISSUING AGENCY:** Albuquerque/ Bernalillo County Air Quality Control Board.  
P.O. Box-1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.  
[20.11.45.1 NMAC - N, 7/1/02]

**20.11.45.2 SCOPE:**

**A. Action Applicability:** Stationary source conformity determinations are required for major and minor stationary sources subject to 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, or 20.11.61 NMAC.

**B. Geographic Applicability:** The provisions of 20.11.45 NMAC shall apply to the area within Bernalillo County that is subject to a maintenance plan for air pollutants.

(1) The provisions of 20.11.45 NMAC apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>), and all other air pollutants identified in Section 108(a) of the Clean Air Act (CAA).

(2) The provisions of 20.11.45 NMAC apply with respect to emissions of the following precursor pollutants:

- (a) Volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in ozone areas,
- (b) NO<sub>x</sub> in NO<sub>2</sub> areas, and
- (c) VOC, NO<sub>x</sub>, PM<sub>10</sub> or PM<sub>2</sub> in PM<sub>10</sub> or PM<sub>2</sub> areas if the EPA Regional Administrator or the manager of the Division has made a finding that precursor emissions within the maintenance area are a significant contributor to the PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment problem.

(3) The provisions of 20.11.45 NMAC apply to all maintenance areas within Bernalillo County for 20 years from the date EPA approves the areas' request under Section 107(d) of the Clean Air Act (CAA) for re-designation to attainment, unless the applicable implementation plan specifies that the provisions of this part shall apply for more than 20 years.

[20.11.45.2 NMAC - N, 7/1/02]

**20.11.45.3 STATUTORY AUTHORITY:** 20.11.45 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

[20.11.45.3 NMAC - N, 7/1/02]

**20.11.45.4 DURATION:** Permanent.

[20.11.45.4 NMAC - N, 7/1/02]

**20.11.45.5 EFFECTIVE DATE:** July 1, 2002, unless a later date is cited at the end of a section.

[20.11.45.5 NMAC - N, 7/1/02]

**20.11.45.6 OBJECTIVE:** This Part establishes requirements that must be met before the Division may issue a new or modified stationary source permit pursuant to: 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, and 20.11.61 NMAC. The objective of 20.11.45 NMAC is to prevent or abate air pollution and violation of the ambient air quality standards within Bernalillo County by ensuring that the Division does not issue stationary source permits that cumulatively exceed the total maximum tons of air pollutants established in any maintenance plan applicable within Bernalillo County.

[20.11.45.6 NMAC - N, 7/1/02]

**20.11.45.7 DEFINITIONS:** In addition to the definitions in 20.11.45 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.45 NMAC shall govern. Terms used in 20.11.45 NMAC but not defined in 20.11.45 NMAC or 20.11.1 NMAC shall have the meaning given them by the New Mexico Air Quality Control Act, by the CAA, or applicable Environmental Protection Agency (EPA) regulations, in that order of priority.

**A. “Ambient Air Quality Standards or Standards”** means the National Ambient Air Quality Standards (NAAQS) established pursuant to Section 109 of the CAA.

**B. “Applicable Implementation Plan”** means the plan defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revisions thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

**C. “Available Tons”** means the number of tons of an air pollutant available for allocation to stationary sources by the Division during a budget period, computed by subtracting the committed tons from the maintenance plan tons.

**D. “Budget Period”** means a period of one year or longer, as stated in an applicable maintenance plan, that establishes the amount of an air pollutant that is allocated to stationary sources.

**E. “CAA”** means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

**F. “Committed Tons”** means the total number of air pollutant tons committed to stationary sources in an applicable maintenance plan and is calculated by adding the tons of an air pollutant that:

(1) have been allocated in all major stationary source permits, all minor stationary source permits, and all registrations that are active at the time the computation is made,

(2) are included in all major and minor stationary source permits that have been published for public comment, and

(3) are included in all 20.11.42 NMAC applications that were deemed complete by the Division prior to January 1, 2002. Allocated tons shall not be double counted when calculating the committed tons.

**G. “Department”** means the Albuquerque Environmental Health Department or its successor agency.

**H. “Division”** means the Air Quality Division of the City of Albuquerque Environmental Health Department, or the Division’s successor agency or authority, which administers and enforces the Albuquerque/Bernalillo County Air Quality Control Board (Board) regulations and serves as staff for the Board.

**I. “Maintenance Area”** means any geographical region of the United States previously designated non-attainment pursuant to the CAA Amendments of 1990 and subsequently re-designated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

**J “Maintenance Plan”** means an implementation plan approved by the EPA pursuant to Section 175A of the CAA, as amended.

**K “Maintenance Plan Tons”** means the tons of an air pollutant allocated to stationary sources over the budget period, as established in an applicable maintenance plan.

**L “Manager”** means the Manager of the Air Quality Division or its successor agency or authority, or his or her designee.

**M. “Non-Attainment Area”** means any geographic region of the United States, which has been designated as non-attainment under Section 107 of the CAA for any criteria pollutant for which a National Ambient Air Quality Standard (NAAQS) exists.

**N “Offset”** means an equivalent or greater emission reduction that is required before an emission increase from a proposed stationary source or modification of an existing source will be included in a permit.

**O “Project”** means any construction or modification subject to 20.11.40 NMAC, 20.11.41 NMAC, 20.11.60 NMAC, or 20.11.61 NMAC, and any increase in an emission limitation subject to 20.11.42 NMAC.

**P. Acronyms.**

(1) **CAA**=Clean Air Act, as amended

(2) **CO**=Carbon monoxide

(3) **EPA**=United States Environmental Protection Agency

(4) **NOx**=Oxides of Nitrogen

(5) **PM<sub>2.5</sub>**=Particulate matter less than or equal to 2.5 microns in diameter

(6) **PM<sub>10</sub>**=Particulate matter less than or equal to 10 microns in diameter

[20.11.45.7 NMAC - N, 7/1/02]

**20.11.45.8 VARIANCES: [RESERVED]**

**20.11.45.9 SAVINGS CLAUSE:** Any amendment to 20.11.45 NMAC that is filed with the State Records Center shall not affect actions pending for violation of a City or County ordinance, a Board Regulation or a permit. 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.

[20.11.45.9 NMAC - N, 7/1/02]

**20.11.45.10 SEVERABILITY:** If any section, paragraph, sentence, clause, or word of 20.11.45 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.45 NMAC.

[20.11.45.10 NMAC - N, 7/1/02]

**20.11.45.11 DOCUMENTS:** Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[20.11.45.11 NMAC - N, 7/1/02]

**20.11.45.12 APPLICABLE REQUIREMENTS:**

**A. Tracking Stationary Source Available Tons:** For each air pollutant that is included in an approved maintenance plan, the Division shall confirm the maintenance plan tons. The Division shall convert the maintenance plan tons for the budget period to tons per year, if the number of tons is not stated in tons per year in the maintenance plan.

(1) At the beginning of each budget period, the Division shall determine available tons for stationary sources by using the following equation. The available tons equals (=) the maintenance plan tons minus (-) the committed tons.

(2) Throughout each budget period, the Division shall adjust the available tons by subtracting the number of tons of the pollutant that have been allocated to permits whose applications have been published for public notice, and by adding tons of the pollutant acquired from expired, cancelled or voided permits. If an application has been published for public notice, but the permit that is issued allocates a different amount of air pollutant than the amount published, or if the permit is not issued, the Division shall make adjustments accordingly to the available tons. The Division shall promptly update the available tons, keep the computation current, and make the information available for public inspection.

**B. Allocation Of Stationary Source Available Tons.**

(1) If a permit application has been submitted to the Division for a project that will emit an air pollutant for which there is an applicable maintenance plan, the Division may issue a permit for up to 50% of the available tons at the time the permit is issued. If the applicant wants more than 50% of the available tons, the applicant must provide offsets for all tons in excess of 50%, consistent with the requirements of 20.11.44 NMAC, Emissions Trading. Allocation of available tons shall be based on a first-come-first-served basis, which shall be determined by comparing the dates that are thirty days after the applicants have submitted complete permit applications. The Division shall determine completeness. The earliest date computed in this manner shall have priority in obtaining 50% of the available tons. As a "tie-breaker", if two or more applications have the same 30-day date, the application for a project that utilizes offsets shall have priority in being issued 50% of the available tons.

(2) A person who participated in an air quality permitting action before the Department shall be notified by the Department of the action taken and the reasons for the action. Notification of the applicant shall be by certified mail. A person who participated in a permitting action before the Department and who is adversely affected by the permitting action may file a petition for a hearing on the merits before the Board. The petition shall be made in writing to the Board within thirty days from the date notice is given of the Department's action. Unless a timely petition for hearing is made, the decision of the Department regarding the permitting action shall be final. Applicable Board regulations, including 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, and 20.11.61 NMAC, may include additional requirements and procedures regarding hearings on the merits held by the Board.

(3) If an applicant wants a permit to be issued for more than 50% of the available tons, but has not provided offsets for the tons in excess of 50% of the available tons, the applicant may ask the Board for additional available tons at a hearing on the merits, which shall be requested as provided in the immediately preceding paragraph.

(4) At the hearing regarding an applicant's request for more than 50% of the available tons, the Board shall consider the potential effect of the requested additional emissions on the Board's obligation to prevent or abate air pollution and avoid violation of the National Ambient Air Quality Standards, and on the requirement for continued compliance with applicable maintenance plans. In addition, the Board shall give the weight the Board deems appropriate to all facts and circumstances, including, but not limited to:

(a) information submitted to the Division by the applicant justifying the request for more than 50% of the available tons,

- property,
- (b) character and degree of injury to or interference with health, welfare, visibility and
  - (c) technical practicability and economic reasonableness of reducing or eliminating the air pollutant from the source involved and previous experience with equipment and methods available to control the air pollutant involved,
  - (d) relevant information submitted by the applicant, the Division, or interested parties, and
  - (e) an analysis prepared by staff which will follow the criteria then in place for analyzing permit requests accompanied by a recommendation.
- [20.11.45.12 NMAC - N, 7/1/02]

**HISTORY OF 20.11.45 NMAC:**

Pre-NMAC History: None.

History of Repealed Material: [RESERVED]