TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 80 ADJUDICATORY PROCEDURES - ~~[ENVIRONMENTAL HEALTH DEPARTMENT -]~~ ADMINISTRATIVE ENFORCEMENT HEARINGS BY DIRECTOR

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AQD EXHIBIT
NON_TECHNICAL
#1
PENGAD 800-631-6989

20.11.80.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.
[20.11.80.1 NMAC – N, __/__/11]

20.11.80.2 SCOPE:

A. Except as otherwise specifically provided by statute or by another applicable board regulation, 20.11.80 NMAC governs:

(1) administrative appeals of administrative compliance orders as defined in Subsection D of 20.11.80.7 NMAC; and

(2) all other adjudicatory enforcement proceedings conducted by or on behalf of the department director if a board regulation establishes that 20.11.80 NMAC governs the proceeding.

B. 20.11.80 NMAC does not govern adjudicatory proceedings of the board regarding:

(1) petitions for variance and related stays, which are governed by 20.11.7 NMAC, *Variance Procedure*, as authorized by Section 74-2-8 NMSA 1978;

(2) petitions for a hearing on the merits before the board made by a permit applicant, permittee or person who participated in a permitting action before the department and who believes that the petitioner is adversely affected by the permitting action, which are governed 20.11.81 NMAC, Adjudicatory Procedures - Air Quality Control Board, as authorized by Section 74-2-7 NMSA 1978; and

(3) adoption, amendment and repeal of board regulations, which are governed by 20.11.82 NMAC, Rulemaking Procedures - Air Quality Control Board, as authorized by Section 74-2-6 NMSA 1978.

C. Exempt: 20.11.80 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the board lacks jurisdiction, or to administrative enforcement actions that involve air care inspection stations, fleet air care stations, air care inspectors or the decentralized or centralized motor vehicle inspection program, which are governed by 20.11.100 NMAC and 20.11.101 NMAC respectively.
[20.11.80.2 NMAC – N, __/__/11]

20.11.80.3 STATUTORY AUTHORITY: 20.11.80 NMAC is adopted pursuant to the authority of the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, specifically Sections 74-2-5, 74-2-5.1 and 74-2-12 NMSA 1978.
[20.11.80.3 NMAC – N, __/__/11]

20.11.80.4 DURATION: Permanent.
[20.11.80.4 NMAC – N, __/__/11]

20.11.80.5 EFFECTIVE DATE: [Date:] _____, 2011, unless a later date is cited at the end of a section.
[20.11.80.5 NMAC – N, __/__/11]

20.11.80.6 OBJECTIVE: To govern the adjudicatory proceedings of the department and the director regarding administrative enforcement, provide due process for all parties and give an orderly structure to the proceedings.
[20.11.80.6 NMAC – N, __/__/11]

20.11.80.7 DEFINITIONS: In addition to the definitions in 20.11.80 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definitions in 20.11.80 NMAC shall govern.

A. "Act" means the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978 and its subsequent amendments and successor provisions.

B. "Air program" means the board program within the municipal limits of Albuquerque and within the boundaries of Bernalillo county with a staff that is authorized to administer and enforce air quality pursuant to the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978.

C. "Board" means the Albuquerque-Bernalillo county air quality control board or its successor board under the act.

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D. "Compliance order" means a written administrative compliance order, compliance determination or other administrative order or document that is issued by the manager of the air program or by the department, and which may include any combination of an allegation of violation, demand for penalty payment, or suspension or revocation of all or part of a permit as authorized by the Air Quality Control Act, Section 74-2-12 NMSA 1978.

E. "Complainant" means the manager of the air program, also known as the air program manager, or other person designated by the director of the department to perform the functions of an air program manager.

F. "Days" means consecutive days except as otherwise specified.

G. "Department" means the city of Albuquerque environmental health department or the successor local agency as defined and authorized by the act.

H. "Director" means the administrative head of the department, the director's designee or a person who assumes the role of the director for purposes of 20.11.80 NMAC in the event of the director's disqualification or withdrawal.

I. "Division" means the air quality division of the department or the division's successor organizational unit.

J. "Hearing clerk" means the department employee designated by the director to provide staff support to the hearing officer and the director regarding the proceedings, issue subpoenas, and maintain the official record of the proceeding.

K. "Hearing officer" means the person appointed by the director to conduct a proceeding pursuant to 20.11.80 NMAC.

L. "Party" means the respondent, the air program and any person who is allowed by the hearing officer or director to intervene in the hearing pursuant to Rule 1-024 NMRA of the New Mexico rules of civil procedure for the district courts.

M. "Record proper" or **"record"** means all documents filed by or with the hearing clerk during the proceeding authorized by 20.11.80 NMAC and includes:

(1) the verbatim record of the hearing in the form of a transcript, tapes or other digital recording, as applicable, and all exhibits offered into evidence at the hearing, whether or not admitted;

(2) the hearing officer's findings of fact and conclusions regarding all material issues of law and discretion and the reasons therefor, the recommended decision and the proposed final order, as required by Subsection C of 20.11.80.16 NMAC; and

(3) the director's final order and reasons, as required by Subsection D of 20.11.80.16 NMAC.

N. "Regulations" means the rules promulgated by the board pursuant to the act.

O. "Request for hearing" means a written request to the department director for review of a compliance order pursuant to Subsection A of 20.11.80.13 NMAC.

P. "Respondent" means the person to whom the air program manager has issued a compliance order.
[20.11.80.7 NMAC – N, __/__/11]

20.11.80.8 VARIANCES: The variance procedures established in 20.11.7 NMAC shall not apply to 20.11.80 NMAC. [20.11.80.8 NMAC – N, __/__/11]

20.11.80.9 SAVINGS CLAUSE: The filing of 20.11.80 NMAC, *Adjudicatory Procedures - [~~Environmental Health Department~~] - Administrative Enforcement - Hearings by Director,* and the filing of an amendment to 20.11.80 NMAC with the state records center and archives shall not affect an action pending for violation of the act, a city or county ordinance, a board regulation or a permit and shall not affect a compliance order that has been filed pursuant to 20.11.80 NMAC. Prosecution for violation of a prior statute, ordinance, regulation, part or permit shall be governed and prosecuted under the statute, ordinance, regulation, part or permit wording in effect at the time the violation was committed.
[20.11.80.9 NMAC – N, __/__/11]

20.11.80.10 SEVERABILITY: If for any reason any section, subsection, sentence, phrase, clause or wording of 20.11.80 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.80 NMAC.
[20.11.80.10 NMAC – N, __/__/10]

of the signer's knowledge, information and belief, there are good grounds to support the document; and that, except for motions for extension of time, the document is not interposed or submitted for purposes of delay.

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(c) A notice [~~or~~] of service that is required by 20.11.80 NMAC shall be deemed adequate if made to the most recent address provided by the person upon whom service is made.

H. Filing and service of documents issued by director or hearing officer: Every document issued by the director and the hearing officer shall be filed with the hearing clerk. The hearing clerk shall promptly serve copies of the document upon all parties.

I. Examination of documents filed: Pursuant to the New Mexico Inspection of Public Records Act at Chapter 14, Article 2 NMSA 1978 and all applicable city of Albuquerque ordinances and administrative instructions, during normal business hours and subject to the provisions of law restricting public disclosure of confidential information, any person may inspect and copy any document filed in any proceeding pursuant to 20.11.80 NMAC. The documents shall be made available by the hearing clerk, as authorized.

J. Samples - Caption; Certificate of Service:

CITY OF ALBUQUERQUE
ENVIRONMENTAL HEALTH DEPARTMENT

CITY OF ALBUQUERQUE
ENVIRONMENTAL HEALTH DEPARTMENT
AIR QUALITY DIVISION
Complainant,

v. Administrative Compliance Order No. [year] - [indiv. order #]
[Note: Confirm the compliance order number with the *hearing clerk before filing.]*

[NAME OF RESPONDENT],
Respondent.

[TITLE OF DOCUMENT: COMPLIANCE ORDER, MOTION FOR ..., etc.]

By: _____
[Signature]

_____
[Print or type name]

Title: _____

Address: _____
Telephone Number: _____ _____
E-mail: _____ _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ***[insert:** name of document]* was *[mailed by first class mail/express mail/hand delivered/ sent by facsimile/ sent by electronic transmission]* to ***[insert:** names of persons upon whom service was made: attorney/party]* on this ____ day of [*month*], 20___.
[List names of persons served:]

By _____
[Signature of person certifying service]

_____
[Print or type name]

[20.11.80.12 NMAC – N, __/__/11]

20.11.80.13 PREHEARING PROCEDURES:

A. Initiation of process: