AQD EXHIBIT
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PENGAD 800-631-6989

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO REPEAL SECTION 20.11.90.12 NMAC, *BREAKDOWN, ABNORMAL OPERATING CONDITIONS, OR SCHEDULED MAINTENANCE* AND REPLACE WITH A NEW RULE, 20.11.49 NMAC, *EXCESS EMISSIONS*. ALSO AMENDING 20.11.65 NMAC, *VOLATILE ORGANIC COMPOUNDS*, AND 20.11.69 NMAC, *PATHOLOGICAL WASTE DESTRUCTORS*, TO CORRECT CROSS-REFERENCING. SUBMIT NEW 20.11.49 NMAC, AND AMENDED 20.11.90 NMAC, AND 20.11.65 NMAC TO EPA AS A REVISION TO THE STATE IMPLEMENTATION PLAN (SIP)

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AQCB Petition No. 2009-4

Air Quality Division,
Environmental Health Department,
City of Albuquerque, Petitioner

Petition for hearing to repeal Section 20.11.90.12 NMAC, *Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance* and replace with a new rule, 20.11.49 NMAC, *Excess Emissions*. Also amending 20.11.65 NMAC, *Volatile Organic Compounds*, and 20.11.69 NMAC, *Pathological Waste Destructors*, to correct cross-referencing. Submit new 20.11.49 NMAC, and amended 20.11.90 NMAC, and 20.11.65 NMAC to EPA as a revision to the state implementation plan (SIP)

The Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division (AQD), asks the Albuquerque-Bernalillo County Air Quality Control Board (Board) for a hearing at which the Board will hear AQD's request that the Board: Repeal Section 20.11.90.12 NMAC, *Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance* and replace with a new rule, 20.11.49 NMAC, *Excess Emissions;* Amend 20.11.65 NMAC, *Volatile Organic Compounds*, and 20.11.69 NMAC, *Pathological Waste Destructors*, to correct cross-referencing; and Submit new 20.11.49 NMAC, and amended 20.11.90 NMAC, and 20.11.65 NMAC to EPA as a revision to the state implementation plan (SIP).

This Petition includes a request for a hearing on these matters and permission to provide a court reporter and hearing officer for the hearing. As grounds, Petitioner states the following:

1. The New Mexico Air Quality Control Act (Air Act), NMSA 1978, Sections 74-2-4 and 74-2-5.B(1) [1967 as amended through 2007] authorizes and requires the Board to adopt, amend, or replace air quality regulations and to adopt air quality plans (SIPs) under NMSA 1978, Section 74-2-5.B(2).

2. On March 2, 1981, the Air Pollution Control Division received a letter from EPA stating that Regulation No. 19 (AKA Section 11 of Resolution No. 1 or Section 19 of Regulation No. 1 or 20.11.90.12 NMAC) "provides automatic exemptions from emission limitations for excess emissions during scheduled maintenance and some other situations. According to EPA guidance, all emissions that exceed emission limitations during startup, shut down, breakdown, or maintenance are a violation of the SIP unless there is a sudden and unavoidable malfunction that is totally beyond the control of the owner and/or operator. The automatic exemption provision is too broadly written and should be limited to sudden unavoidable exceedances". Also, "the information which the source must report to the agency must be more specific. Enough detail must be reported to enable the agency to determine that the excess emissions were caused by a sudden and unavoidable occurrence". In light of this letter, the Air Quality Division evaluated the need for a SIP revision to address EPA's concerns. However, because a SIP revision was not mandated by EPA, this effort was never completed.

3. On September 28, 1982, September 20, 1999, and again on December 5, 2001, the U.S. Environmental Protection Agency (EPA) issued guidance on how states should

address excess emissions during malfunction, startup and shutdown in their State Implementation Plan (SIP).

4. In 2004, the New Mexico Environment Department's Air Quality Bureau (AQB) received a letter from EPA stating that "Section 20.2.7.109 NMAC is not consistent with the Environmental Protection Agency's (EPA) interpretation of the Clean Air Act as outlined in a 1999 memorandum, entitled '*State Implementation Plans: Policy Regarding Excess Emissions During Malfunction, Startup, and Shutdown*'. . .because the provision can be interpreted to exempt emissions from compliance with SIP limits. Because excess emissions might aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation. However, the State or EPA can exercise enforcement discretion to refrain from taking enforcement action in certain circumstances. Also, the State has discretion to provide an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction, startup, and shutdown episodes".

5. To bring New Mexico's rule into alignment with federal guidance, the Air Quality Bureau (AQB) proposed to the Environmental Improvement Board (EIB), that they repeal 20.2.7 NMAC, *Excess Emissions*, [filed 4/29/1981], and replace it with a new rule that complies with EPA guidance. The AQB's proposal tightened notification requirements, established criteria recommended by EPA for affirmative defenses, and required "root cause" and "corrective action" analysis. The EIB adopted this new excess emissions rule, which became effective on 8/1/08.

6. The extant version of the excess emissions rule for Bernalillo County, entitled *Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance*, 20.11.90.12 NMAC was first adopted by the Albuquerque – Bernalillo County Air Quality Control Board (Air Board) as Section 11 of Resolution No. 1, and subsequently filed on 8/6/1971. This rule was subsequently changed, replacing the term "upset" with the term "abnormal operating conditions", replacing the term "Secretary" with the term "Director" and becoming "Section 19" instead of "Section 11". This amended rule was filed on 6/6/1973. Section 19 of Regulation # 1 was filed again on 7/19/1973 and 3/21/1977, but without any changes. The rule that was filed on 3/21/1977 was subsequently submitted to EPA for inclusion into the SIP and was approved by EPA on 4/10/1980, and made effective that same day. The name of the rule was changed from "Section 19" to "Regulation 19", and filed on 3/24/1982. The rule was reformatted twice [Filed 10/27/1995 & 10/1/2002] to conform to the New Mexico Administrative Code. Except for formatting differences and phraseology, this rule has not changed substantively since 1971. Thus, in order to comply with current EPA guidance, and to comport with New Mexico's new rule, the Air Board's excess emissions rule needs to be updated. Therefore, the Air Quality Division proposes that Section 20.11.90.12 NMAC, be repealed (while leaving the rest of 20.11.90 NMAC intact), and be replaced by a new rule, 20.11.49 NMAC, *Excess Emissions*. The proposed replacement rule, *Excess Emissions*, 20.11.49 NMAC is patterned after New Mexico's rule, 20.2.7 NMAC, *Excess Emissions*, with some modifications made in response to comments received from EPA. These modifications include the deletion of Sections 14 and 15 of 20.2.7 NMAC, and the incorporation of language from Oklahoma's rule, entitled *Excess Emission Reporting*

Requirements, 252.100.9 OAC. The current proposal will reduce ambiguity within the rule, clearly define what is allowed and not allowed to qualify as an excess emissions event, and stipulate how reporting should take place.

7. EPA considers startup, shutdown and scheduled maintenance as part of a facility's normal operation and as such, should be accounted for in the planning, design and implementation of operating procedures for the source's process and control equipment. Therefore, excess emissions should only occur under exceptional circumstances, and not during scheduled maintenance, startup or shutdown. Thus, current language at 20.11.90.12 NMAC regarding startup, shutdown, and scheduled maintenance is out of compliance with EPA guidance, and needs to be removed. The proposed rule prohibits excess emissions for startup or shutdown unless they are the result of unavoidable and unforeseeable malfunctions.

8. In addition, as part of the required analysis for excess emissions events, the Air Quality Division is proposing a requirement for a "root cause analysis". This would be a detailed technical analysis of excess emission events that determines the underlying reason(s) that the event occurred and all contributing factors to the malfunction, to the extent possible. The analysis would also require an evaluation of alternative measures (if any) that can be implemented to reduce the likelihood of a recurrence of such an incident. Minimizing the likelihood of excess emissions from malfunctions will reduce the reporting burden for both facilities and the Air Quality Division.

9. The cross-references made to 20.11.90.12 NMAC, found at 20.11.65.7.A NMAC and 20.11.69.25.A NMAC, are proposed to be changed to refer to 20.11.49 NMAC instead.

10. It is anticipated that the hearing will take approximately 1 hour or less.

11. The proposed Public Review Drafts for 20.11.90 NMAC, *Administration, Enforcement, Inspection*; 20.11.49 NMAC, *Excess Emissions;* 20.11.65 NMAC, *Volatile Organic Compounds*, and 20.11.69 NMAC, *Pathological Waste Destructors* are attached as AQD Exhibits #1a, #1b, #1c and #1d respectively.

Respectfully submitted,

Isreal Tavarez
Environmental Engineering Manager
Air Quality Division
Environmental Health Department
City of Albuquerque
One Civic Plaza, NW, Room 3047
Albuquerque, New Mexico 87103
(505) 768-1965

CERTIFICATION

I hereby certify that a copy of this petition to repeal section 20.11.90.12 NMAC, *Breakdown, Abnormal Operating Conditions, Or Scheduled Maintenance* and replace with a new rule, 20.11.49 NMAC, *Excess Emissions;* Also amending 20.11.65 NMAC, *Volatile Organic Compounds*, and 20.11.69 NMAC, *Pathological Waste Destructors*, to correct cross-referencing; and submission of a new 20.11.49 NMAC, and amended 20.11.90 NMAC, and 20.11.65 NMAC to EPA as a revision to the state implementation plan (SIP) and requesting a hearing was delivered to the following person on June 23, 2009.

Janice Amend
Air Quality Control Board Liaison
Air Quality Division
Environmental Health Department
City of Albuquerque
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103

Isreal Tavarez

PENGAD 800-631-6989 AQD EXHIBIT 1a

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 90 SOURCE SURVEILLANCE; ADMINISTRATION AND ENFORCEMENT [~~, AND INSPECTION~~]

20.11.90.1 ISSUING AGENCY: Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) [~~768-2600~~] 768-2601.
[3/21/77. . .12/1/95; 20.11.90.1 NMAC - Rn, 20 NMAC 11.90.I.1, 10/1/02]

20.11.90.2 SCOPE:

A. [~~This Part~~] 20.11.90 NMAC is applicable to any source within Bernalillo county.

B. Exempt: [~~This Part~~] 20.11.90 NMAC does not apply to sources within Bernalillo county, which are located on indian lands over which the Albuquerque - Bernalillo County Air Quality Control lacks jurisdiction.
[12/1/95; 20.11.90.2 NMAC - Rn, 20 NMAC 11.90.I.2, 10/1/02]

20.11.90.3 STATUTORY AUTHORITY: [~~This Part~~] 20.11.90 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.
[3/21/77. . .12/1/95; 20.11.90.3 NMAC - Rn, 20 NMAC 11.90.I.3, 10/1/02]

20.11.90.4 DURATION: Permanent.
[12/1/95; 20.11.90.4 NMAC - Rn, 20 NMAC 11.90.I.4, 10/1/02]

20.11.90.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.
[12/1/95; 20.11.90.5 NMAC - Rn, 20 NMAC 11.90.I.5 & A, 10/1/02]

20.11.90.6 OBJECTIVE: [~~The objective of This Part is~~] To minimize emissions from sources through inspection, enforcement, and good operating procedures.
[12/1/95; 20.11.90.6 NMAC - Rn, 20 NMAC 11.90.I.6, 10/1/02]

20.11.90.7 DEFINITIONS: [Reserved]

20.11.90.8 VARIANCES: [Reserved]

20.11.90.9 SAVINGS CLAUSE: Any amendment to 20.11.90 NMAC which is filed with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation No. 19, 23, and 25, or 20.11.90 NMAC. 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.
[12/1/95; 20.11.90.9 NMAC - Rn, 20 NMAC 11.90.I.9, 10/1/02]

20.11.90.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of [~~This Part~~] 20.11.90 NMAC or the 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 portions of [~~This Part~~] 20.11.90 NMAC.
[12/1/95; 20.11.90.10 NMAC - Rn, 20 NMAC 11.90.I.10, 10/1/02]

20.11.90.11 DOCUMENTS: Documents incorporated and cited in [~~This Part~~] 20.11.90 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.
[12/1/95; 20.11.90.11 NMAC - Rn, 20 NMAC 11.90.I.11 & A, 10/1/02]

20.11.90.12 [~~BREAKDOWN, ABNORMAL OPERATING CONDITIONS, OR SCHEDULED MAINTENANCE:~~ ~~Operation of any equipment or air pollution control devices or apparatus so as to cause emissions of air contaminants in excess of limits set by these air pollution control regulations, which is a direct result of breakdown of equipment or of abnormal operating conditions, or is a direct result of the shutdown of such~~

~~equipment or air pollution control devices or apparatus for scheduled maintenance is not a violation of these air pollution control regulations, provided:~~

~~**A.** As to scheduled maintenance, the occurrence is reported in advance to the Director during his working hours and that such work is performed during periods of non-operation and when the Air Pollution Potential Index is under 50.~~

~~**B.** As to breakdown of equipment or abnormal operating conditions, the occurrence has been reported to the Director as soon as practicable, but no later than two (2) hours after the occurrence, except that when the Director's office is closed, such report shall be made within two (2) hours after said office reopens for regular business.~~

~~**C.** Repairs are made with maximum, reasonable effort, including use of off-shift labor, overtime or work periods of non-operation.~~

~~**D.** The emission of air contaminants is minimized as much as reasonably possible during breakdown of equipment, abnormal operating conditions or scheduled maintenance.~~

~~**E.** In the event of emission of air contaminants of a nature or in quantities, which would endanger public health or safety, such emission is stopped entirely or reduced to harmless levels as soon as possible.~~

~~**F.** Breakdown of equipment or abnormal operating conditions do not occur with such frequency that careless, marginal, unsafe or deliberate abnormal operation is indicated.~~] Reserved

[3/21/77. . .3/24/82; 12/1/95; 20.11.90.12 NMAC - Rn, 20 NMAC 11.90.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.90.II.1, 10/1/02]

20.11.90.13 SOURCE SURVEILLANCE:

A. The owner or operator of any stationary source of an air contaminant shall, upon notification by the director, maintain records of the nature and amounts of emissions, to which an air quality control emission regulation applies, from the source and [~~nay~~] any other information as may be deemed necessary by the director to determine whether the source is in compliance with applicable regulations.

B. The information recorded as specified in Subsection A of 20.11.90.13 NMAC shall be summarized and reported to the director, on forms furnished by the director, and shall be submitted within [~~forty-five~~] ~~(~~ 45 ~~)~~ days after the end of the reporting period. Reporting periods are November 1 through April 30 and May 1 through October 31 or such other periods as the director may deem necessary. Information reported to the director shall be signed by the person responsible for its accuracy.

C. Emission data obtained by the director shall be correlated with applicable emission limitations and other control measures and be made available to the public during normal business hours.

D. The owner or operator of a stationary source shall, to determine compliance with these regulations or to meet the source sampling requirements of a compliance schedule, conduct performance tests or allow the director to conduct performance tests as specified in Subsection F of 20.11.90.13 NMAC.

E. The director shall establish a periodic visual surveillance system to detect and investigate apparent violations of visible emission limitations and such complaints relating to apparent violations of the regulations as may occur.

F. Performance Tests:

(1) As required by the director, the owner or operator of a stationary source shall conduct performance tests and furnish the director with a written report of the results.

(2) Performance tests shall be conducted and the results reported in accordance with the test method, as set forth in the Federal Register, Volume 36, No. 247, December 23, 1971, Part 60.8, or an approved alternate test method. The director shall have [~~(ten)~~] 10 days prior notice before such testing is performed.

(3) The owner or operator shall permit the director to conduct performance tests at any reasonable time and shall operate the stationary source for such testing purposes as the director shall specify.

(4) Each performance test shall consist of three repetitions of the applicable test procedure. For the purpose of determining compliance with an applicable standard of performance, the average results of all repetitions shall apply.

(5) The director shall determine that the performance test method has been properly performed before accepting the results submitted by the owner or operator of the source.

[3/21/77. . .3/24/82; 20.11.90.13 NMAC - Rn, 20 NMAC 11.90.II.2, 10/1/02]

20.11.90.14 ADMINISTRATION AND ENFORCEMENT:

A. Upon request of the director, the person responsible for the emission of air contaminants for which limits are established by the [~~20.11 NMAC~~] rules codified under Title 20, *Environmental Protection*, Chapter 11,

Albuquerque – Bernalillo County Air Quality Control Board, of the New Mexico Administrative Code, shall provide such facilities, utilities, and openings exclusive of instrument and sensing devices, as may be necessary for the proper determination of the nature, extent, quantity and degree of such air contaminants. Such facilities may be either temporary or permanent at the discretion of the person responsible for their provisions; and shall be suitable for determination consistent with emission limits established in these [~~Parts~~] rules.

B. As an additional means of enforcing the [~~20.11 NMAC~~] rules codified under Title 20, *Environmental Protection*, Chapter 11, *Albuquerque – Bernalillo County Air Quality Control Board*, of the New Mexico Administrative Code, the director may accept a written assurance of discontinuance of any act or practice deemed in violation of these [~~Parts~~] rules or any [~~Part~~] rule adopted pursuant thereto from any person engaging in, or who has engaged in, such act or practice, signed and acknowledged by the director and during which such discontinuance is to be accomplished.

[3/21/77. . .3/24/82; 20.11.90.14 NMAC - Rn, 20 NMAC 11.90.II.3, 10/1/02]

HISTORY OF 20.11.90 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

Resolution No. 1, Air Pollution Control Regulations of the Albuquerque Bernalillo County Air Quality Control Board, filed 8/6/71.

Regulation No. 1, Air Pollution Control Regulations, filed 6/6/73;

Regulation No. 1, Air Pollution Control Regulations, filed 7/19/73;

Regulation No. 1, Air Pollution Control Regulations, filed 3/21/77;

Regulation No. 19, Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance, filed 3/24/82;

Regulation No. 23, Source Surveillance, filed 3/24/82;

Regulation No. 25, [~~Regulation~~] Administration and Enforcement, filed 3/24/82.

History of Repealed Material: [Reserved]

Other History: Regulation No. 19, Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance (filed 3/24/82); Regulation No. 23, Source Surveillance (filed 3/24/82); Regulation No. 25, [~~Regulation~~] Administration And Enforcement (filed 3/24/82) were **renumbered** and **reformatted** into first version of the New Mexico Administrative Code and **replaced** by 20 NMAC 11.90, Administration, Enforcement, Inspection, effective 12/01/95.

20 NMAC 11.90, Administration, Enforcement, Inspection (filed 10/27/95) was **renumbered, reformatted, amended and replaced** by 20.11.90 NMAC, Administration, Enforcement, And Inspection, effective 10/1/02.

AQD EXHIBIT
1b

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 49 EXCESS EMISSIONS

20.11.49.1 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.
[20.11.49.1 NMAC - N, xx/xx/xx]

20.11.49.2 SCOPE:
A. 20.11.49 NMAC is applicable to every stationary source within Bernalillo county.
B. **Exempt**: 20.11.49 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.
[20.11.49.2 NMAC - N, xx/xx/xx]

20.11.49.3 STATUTORY AUTHORITY: 20.11.49 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; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Sections 9-5-1-4 and 9-5-1-5.
[20.11.49.3 NMAC - N, xx/xx/xx]

20.11.49.4 DURATION: Permanent.
[20.11.49.4 NMAC - N, xx/xx/xx]

20.11.49.5 EFFECTIVE DATE: xx/xx/xx, unless a later date is cited at the end of a section.
[20.11.49.5 NMAC - N, xx/xx/xx]

20.11.49.6 OBJECTIVE:
To implement requirements for the reporting of excess emissions and establish affirmative defense provisions for facility owners and operators for excess emissions.
[20.11.49.6 NMAC - N, xx/xx/xx]

20.11.49.7 DEFINITIONS: In addition to the definitions in 20.11.49 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.49 NMAC shall govern.

A. **"Air pollution control equipment"** means any device, equipment, process or combination thereof, the operation of which may limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state (e.g. sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection).

B. **"Air quality regulation or permit condition"** means any regulation adopted by the board, including a federal new source performance standard or national emission standard for hazardous air pollutants incorporated by reference, or any condition of an air quality permit issued by the department.

C. **"Bypass"** means the diversion of a regulated air contaminant around air pollution control equipment or process equipment.

D. **"Building, structure, facility, or installation"** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e. , which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0065 and 003–005–00176–0, respectively).

E. **"Emergency"** means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God or nature, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include

noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

F. **"Excess emission"** means the emission of an air contaminant, including a fugitive emission, in excess of the quantity, rate, opacity or concentration specified by an air quality regulation or permit condition.

G. **"Malfunction"** means any sudden and unavoidable failure of air pollution control equipment or process equipment beyond the control of the owner or operator, including malfunction during startup or shutdown. A failure that is caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered a malfunction.

H. **[Reserved]**

I. **"Regular business day"** means any day on which city of Albuquerque government offices are open for normal business. Saturdays, Sundays, and official federal and city of Albuquerque holidays are not regular business days.

J. **"Shutdown"** means the cessation of operation of any air pollution control equipment or process equipment.

K. **"Startup"** means setting into operation any air pollution control equipment or process equipment.

L. **"Stationary source" or "source"** means any building, structure, facility, or installation which emits or may emit a regulated air pollutant.

[20.11.49.7 NMAC - N, xx/xx/xx]

20.11.49.8 **VARIANCES:** [Reserved].

[20.11.49.8 NMAC - N, xx/xx/xx]

20.11.49.9 **SAVINGS CLAUSE:** Any amendment to 20.11.49 NMAC which is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, or 20.11.49 NMAC. 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.

[20.11.49.9 NMAC - N, xx/xx/xx]

20.11.49.10 **SEVERABILITY:** If for any reason any section, subsection, sentence, phrase, clause, wording or application of 20.11.49 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 or application of remaining portions of 20.11.49 NMAC.

[20.11.49.10 NMAC - N, xx/xx/xx]

20.11.49.11 **DOCUMENTS:** Documents incorporated and cited in 20.11.49 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Room 3023, Albuquerque, NM 87102.

[20.11.49.11 NMAC - N, xx/xx/xx]

20.11.49.12 **COMPLIANCE WITH OTHER REGULATIONS:** Compliance with 20.11.49 NMAC does not relieve a person from the responsibility to comply with any other applicable federal, state, or local statute or regulation.

[20.11.49.12 NMAC - N, xx/xx/xx]

20.11.49.13 **APPLICABILITY**:

A. Any source:

(1) whose operation results in an emission of a regulated air pollutant, including a fugitive emission, in excess of the quantity, rate, opacity or concentration specified by an air quality regulation or permit condition; or

(2) subject to the requirements of 20.11.47 NMAC, *Emissions Inventory Requirements*, 20.11.41 NMAC, *Authority-To-Construct*, 20.11.42 NMAC, *Operating Permits*, 20.11.61 NMAC, *Prevention of Significant Deterioration*, or 20.11.60 NMAC, *Permitting In Nonattainment Areas*.

B. Deviations under 20.11.42 NMAC, *Operating Permits* that do not result in excess emissions are not subject to the provisions of 20.11.49 NMAC.

C. 20.11.49 NMAC does not create a separate cause of action for failure to obtain a permit under 20.11.41 NMAC, *Authority-To-Construct*, 20.11.42 NMAC, *Operating Permits*, 20.11.61 NMAC, *Prevention of Significant Deterioration*, or 20.11.60 NMAC, *Permitting In Nonattainment Areas*.

[20.11.49.13 NMAC - N, xx/xx/xx]

20.11.49.14 OPERATION RESULTING IN AN EXCESS EMISSIONS: The emission of a regulated air pollutant in excess of the quantity, rate, opacity, or concentration specified in an air quality regulation or permit condition that results in an excess emission is a violation of the air quality regulation or permit condition and may be subject to an enforcement action. The owner or operator of a source having an excess emission shall, to the extent practicable, operate the source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.
[20.11.49.14 NMAC - N, xx/xx/xx]

20.11.49.15 NOTIFICATION:

A. The owner or operator of a source having an excess emission shall report the following information to the department on forms provided by the department. The department may authorize the submittal of such reports in electronic format. The department may require that the owner or operator of a source provide supplemental information in addition to that already required by 20.11.49.15 NMAC. The additional information shall be reported by the deadline specified by the department.

(1) Initial report: The owner or operator shall file an initial report, no later than the end of the next regular business day after the time of discovery of an excess emission. The initial report shall include all available information regarding each item required by Subsection B of 20.11.49.15 NMAC.

(2) Final report: No later than 10 days after the end of the excess emission, the owner or operator shall file a final report that contains specific and detailed information for each item required by Subsection B of 20.11.49.15 NMAC.

B. The report shall include the following information:

(1) the name of the source;

(2) the name of the owner and operator of the source;

(3) the name and title of the person preparing the report;

(4) identifying information (e.g. permit and database numbers);

(5) the specific date(s) and time(s) the excess emission occurred;

(6) identification of the equipment involved and the emission point(s) (including bypass) from which the excess emission occurred;

(7) the air quality regulation or permit condition that was exceeded;

(8) identification of the air contaminant(s) and the magnitude of the excess emission expressed in the units of the air quality regulation or permit condition;

(9) the method for determining the magnitude and duration of the excess emission;

(10) the cause and nature of the excess emission;

(11) the steps taken to limit the duration and magnitude of the excess emission;

(12) the corrective action(s) taken to eliminate the cause of the excess emission; if one or more corrective actions are required, the report shall include a schedule for implementation of those actions, with associated progress reports; if no corrective actions are required, the report shall include a detailed explanation for that conclusion.

(13) the corrective action(s) taken to prevent a recurrence of the excess emission;

(14) whether the owner or operator attributes the excess emission to malfunction, startup or shutdown;

(15) whether the owner or operator will claim an affirmative defense under Subsections A, B or C of 20.11.49.16 NMAC; if claiming an affirmative defense, an analysis and the supporting evidence for each reason shall be submitted no later than 30 days after submittal of the final report required by 20.11.49.15 NMAC; no later than 30 days after the earlier of the department's receipt of the final report or the deadline for submitting the final report, if the department receives a request for an extension from the owner or operator of the source, the department may grant an extension to complete the analysis not to exceed 30 additional days; and

(16) the contents of the final report shall contain a signed certification of truth, accuracy, and completeness; the certification shall be signed by the person who is reporting the excess emission.

C. If the period of an excess emission extends beyond 10 days, the owner or operator shall submit the final report required by Subsection B of 20.11.49.15 NMAC to the department within 72 hours of the date and time the excess emission ceased.

D. Alternative reporting. If an owner or operator of a source is subject to both the excess emission reporting requirements of 20.11.49.15 NMAC and the reporting requirements of 40 CFR Parts 60, 61, and 63, and

the federal reporting requirements duplicate the requirements of 20.11.49.15 NMAC, then the federal reporting requirements shall suffice.

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[20.11.49.15 NMAC - N, xx/xx/xx]

20.11.49.16 AFFIRMATIVE DEFENSES: All periods of excess emissions regardless of cause are violations of the act and the rules promulgated thereunder, the New Mexico Air Quality Control Act and rules promulgated thereunder, and applicable permit or other authorization of the air board. 20.11.49 NMAC provides an affirmative defense to owners and operators for civil or administrative penalty actions brought for excess emissions during periods of startup, shutdown malfunction or emergency, unless otherwise prohibited by Subsection D of 20.11.49.16 NMAC. 20.11.49.15 NMAC shall not be construed as limiting EPA's or citizens' authority under the act. The department may require the owner or operator of a source to provide supplemental information in addition to that already required by 20.11.49.16 NMAC. The additional information shall be reported by the deadline specified by the department.

A Affirmative defense for an excess emission during *malfunction*:
The owner or operator of a source subject to 20.11.49 NMAC may claim an affirmative defense for an excess emission during malfunction, against a civil penalty imposed in an administrative or judicial enforcement action,. There shall be no affirmative defense for an excess emission during malfunction, from the owner or operator's liability or the department's claim for injunctive relief for the excess emission. The owner or operator claiming an affirmative defense for an excess emission during malfunction, shall bear the burden of proof including the demonstration of the following criteria:

(1) the excess emission was caused by a malfunction;

(2) the excess emission:

(a) did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(b) could not have been avoided by better operation and maintenance practices;

(3) to the maximum extent practicable the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;

(4) repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded; off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

(5) the amount and duration of the excess emission (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(6) all possible steps were taken to minimize the impact of the excess emission on ambient air quality;

(7) all emission monitoring systems were kept in operation if at all possible;

(8) the owner or operator's actions in response to the excess emission were documented by properly signed, contemporaneous operating logs, or other relevant evidence;

(9) the excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(10) the owner or operator complied with the notification requirements in 20.11.49.15 NMAC.

B Affirmative defense for an excess emission during *startup or shutdown*:
The owner or operator of a source subject to 20.11.49 NMAC may claim an affirmative defense for an excess emission during startup or shutdown against a civil penalty imposed in an administrative or judicial enforcement action. . There shall be no affirmative defense for an excess emission during startup or shutdown, from the owner or operator's liability or the department's claim for injunctive relief for the excess emission. The owner or operator claiming an affirmative defense for an excess emission during startup or shutdown shall bear the burden of proof including the demonstration of the following criteria:

(1) the excess emission occurred during a startup or shutdown;

(2) the periods of excess emissions that occurred during startup or shutdown were short and infrequent and could not have been prevented through careful planning and design;

(3) the excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(4) if the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(5) at all times, the source was operated in a manner consistent with good practices for minimizing emissions;

(6) the frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable;

(7) all possible steps were taken to minimize the impact of the excess emission on ambient air quality;

(8) all emissions monitoring systems were kept in operation if at all possible;

(9) the owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and

(10) The owner or operator complied with the notification requirements in 20.11.49.15 NMAC.

C Affirmative defense for an *emergency*.

(1) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation if the owner or operator of the source demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) an emergency occurred and that the owner or operator can identify the cause(s) of the emergency;

(b) the source was being properly operated at the time;

(c) during the period of the emergency the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the technology-based emission limitation; and

(d) the owner or operator fulfilled the notification requirements under Subsection A of 20.11.49.15 NMAC, including a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(2) In any enforcement proceeding, the owner or operator seeking to establish the occurrence of an emergency has the burden of proof.

D Affirmative defenses *prohibited*. The affirmative defense provisions of this section shall not be available for:

(1) claims for injunctive relief;

(2) SIP limits or permit limits that have been set taking into account potential emissions during startup and shutdown, including, but not limited to, limits that indicate they apply during startup and shutdown, and limits that explicitly indicate they apply at all times or without exception;

(3) excess emissions that cause an exceedance of the NAAQS or PSD increments;

(4) failure to meet federally promulgated emission limits, including, but not limited to, 40 CFR Parts 60, 61 and 63; or

(5) violations of requirements that derive from 40 CFR Parts 60, 61 and 63 or any other federally enforceable performance standard or emission limit.

E Department's determination of adequacy of affirmative defense. The department may issue a determination regarding an owner or operator's assertion of the affirmative defense under Subsections A, B or C of 20.11.49.16 NMAC on the basis of any relevant information, including but not limited to information submitted pursuant to 20.11.49 NMAC or obtained through an inspection. Any such determination is not a final action and is not reviewable, shall not be a prerequisite to the commencement of an administrative or judicial enforcement action, does not constitute a waiver of liability pursuant to 20.11.49.18 NMAC, and shall not preclude an enforcement action by the federal government or a citizen pursuant to the federal Clean Air Act. A source may not assert an affirmative defense under Subsections A, B or C of 20.11.49.16 NMAC in an administrative or judicial enforcement action unless it asserted such defense pursuant to Paragraph (15) of Subsection B of 20.11.49.15 NMAC.

[20.11.49.16 NMAC - N, xx/xx/xx]

20.11.49.17 ROOT CAUSE AND CORRECTIVE ACTION ANALYSIS:

A. Upon receipt of a written demand by the department, the owner or operator of a source having an excess emission, shall prepare an analysis that uses analytical tools determined by the department to be appropriate. The analysis shall contain the following information:

(1) an analysis describing the root cause and all contributing causes of the excess emission; and

(2) an analysis of the corrective actions implemented or available to reduce the likelihood of a recurrence of the excess emission resulting from the causes identified under Paragraph (1) of Subsection A of 20.11.49.17 NMAC, including, as applicable:

(a) identification of implemented or available corrective action alternatives, such as changes in design, operation and maintenance;

(b) the estimated cost associated with each corrective action alternative;

(c) the probable effectiveness of each corrective action alternative;

(d) if no corrective action alternatives are available, a clear explanation providing an adequate justification for that conclusion; and

(e) if one or more corrective actions are identified, a schedule for implementation and progress reports.

B. The department shall make the demand for an analysis no later than 90 days after receipt of the final report required by Subsection A of 20.11.49.15 NMAC.

C. The department may require the analysis authorized by Subsection A of 20.11.49.17 NMAC after considering relevant factors. Examples of relevant factors include the significance of the excess emission, the nature or pattern of excess emissions, and the history of the source, as well as any other factors determined to be relevant by the department.

D. The completed analysis shall be submitted to the department no later than 60 days after the department's demand is received by the owner or operator of the source, pursuant to Subsection A of 20.11.49.17 NMAC. For good cause shown, the department may grant an extension to submit the analysis.

E. The owner or operator of a source complying with 20.11.49.17 NMAC may assert a claim for confidential information protection.

[20.11.49.17 NMAC - N, xx/xx/xx]

20.11.49.18 FUTURE ENFORCEMENT ACTION: The department may commence an administrative or judicial enforcement action against the owner or operator of a source for an excess emission for which the department has made a determination pursuant to Subsection E of 20.11.49.16 NMAC if the department determines that the excess emission is related to a pattern of excess emission events, poor maintenance, careless or marginal operation, or other appropriate reason.

[20.11.49.18 NMAC - N, xx/xx/xx]

HISTORY OF 20.11.49 NMAC:

Pre- NMAC History: The material in this part was derived from that previously filed with the commission of public records – state records center and archives.

Regulation No. 19, Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance; filed 3/24/82;

History of Repealed Material: 20.11.90.12 NMAC, Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance (filed 8/30/02) was repealed and replaced by 20.11.49 NMAC xx/xx/xx

Other History:

AQD EXHIBIT
1 c
PENGAD 800-631-6989

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 65 VOLATILE ORGANIC COMPOUNDS

20.11.65.1 ISSUING AGENCY: Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) [~~768-2600~~] 768-2601.
[3/23/87. . .12/1/95; 20.11.65.1 NMAC - Rn, 20 NMAC 11.65.I.1, 10/1/02]

20.11.65.2 SCOPE: 20.11.65 NMAC is applicable to any source located within Bernalillo County.
A. Exempt: 20.11.65 NMAC does not apply to sources within Bernalillo County which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control Board lacks jurisdiction.
B. NSPS Facilities: Facilities, processes and equipment that are subject to specific requirements or allowed exemption by the federal New Source Performance Standards per 40 CFR 60 shall be exempt from the requirements of 20.11.65 NMAC that would otherwise govern.
[3/23/87. . .12/1/95; 20.11.65.2 NMAC - Rn, 20 NMAC 11.65.I.2 & A, 10/1/02]

20.11.65.3 STATUTORY AUTHORITY: This Part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Section 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.
[3/23/87. . .12/1/95; 20.11.65.3 NMAC - Rn, 20 NMAC 11.65.I.3, 10/1/02]

20.11.65.4 DURATION: Permanent.
[12/1/95; 20.11.65.4 NMAC - Rn, 20 NMAC 11.65.I.4, 10/1/02]

20.11.65.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.
[12/1/95; 20.11.65.5 NMAC - Rn, 20 NMAC 11.65.I.5 & A, 10/1/02]

20.11.65.6 OBJECTIVE: The objective of this Part is to prevent or reduce emission of hydrocarbon vapors from facilities and sources not otherwise regulated or exempted by 40 CFR Part 60; including volatile organic compounds and petroleum liquids, in order to prevent the formation of photochemical oxidants in the atmosphere.
[3/23/87. . .12/1/95; 20.11.65.6 NMAC - Rn, 20 NMAC 11.65.I.6, 10/1/02]

20.11.65.7 DEFINITIONS: In addition to the definitions in 20.11.65.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.65 NMAC shall govern.
A. "Active life" means the time from initial startup until final shut down of the facility. This would also include periods of scheduled or unscheduled maintenance, flow adjustments or system failure, all of which are subject to the provisions of [~~20.11.90 NMAC~~] 20.11.49 NMAC.
B. "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the EPA Administrator's or the Director's satisfaction, in specific cases, to produce results adequate for the determination of compliance.
C. "Contaminated" means a condition resulting from seepage, drainage, or flow of gaseous or liquid substances from activities such as a leaking underground storage tank, usually detected by hydro-geologic investigations or underground storage tank excavation and removal.
D. "Cutback asphalt" means asphalt cement or other paving material, which has been diluted or blended with petroleum solvents such as kerosene, naphtha, diesel oil, gasoline, or similar petroleum distillate products.
E. "Decontamination facility" means a place where a portable or stationary treatment system is installed and operated to receive water, air, or other gaseous substances bearing VOC contaminants.
F. "Dispense" means to introduce organic liquids by temporary connection from a supply container, greater than 60 gallons capacity, into a receptor container, which is normally closed and sealed against spillage or evaporative loss.
G. "Equivalent approved by the director" means the authorization to substitute an alternative control process, which has been demonstrated to the satisfaction of the Director to result in no greater emissions,

than would occur with the control process otherwise required. The Director may use federal EPA document AP-42 or any other reliable reference and/or manufacturers data in completing the evaluation of the proposed alternative.

H. **"Equivalent method"** means any method of sampling and analyzing for an air pollutant which is not a reference method but which has been demonstrated to the EPA Administrator's or the Director's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

I. **"Existing facilities"** means those decontamination facilities, which were constructed and placed in operation prior to June 1, 1991.

J. **"Gasoline"** means a mixture of liquid hydrocarbons with Reid Vapor Pressure of 4.0 psi or greater which is suitable for use as a fuel in spark ignition internal combustion engines and includes oxygenated blends.

K. **"Loading rack"** means a gasoline loading facility, which was constructed prior to December 17, 1980, and it includes loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill tank trucks. Those constructed or refurbished after December 17, 1980, may be subject to 20.11.63 NMAC, New Source Performance Standards.

L. **"Motor vehicle"** means any wheeled conveyance propelled by an internal combustion engine and commonly operated on roadways and which has a fuel tank capacity exceeding 5.0 U.S. gallons (18.93 liters).

M. **"New facilities"** means those decontamination facilities, which are authorized by an Authority-to-Construct permit issued by the Department and dated June 1, 1991 or later.

N. **"Organic fluid"** means any substance or mixture thereof, which is liquid at standard conditions and contains carbon compounds that act as volatile organic compounds.

O. **"Oxygenate"** means an oxygen-containing, ashless organic compound such as alcohol or ether, which may be used as a motor vehicle fuel or fuel supplement.

P. **"Reference method"** means any method of sampling and analyzing for an air pollutant as described in Appendix A to 40 CFR 60.

Q. **"Regenerate"** means to drive off or cause the release of adsorbed or absorbed VOC from the collection media of a pollution control device.

R. **"Stationary container"** shall mean any aggregation or combination of containers which is:

(1) possessed by one person,

(2) located so that any portion of such aggregation or combination of containers can be encompassed within a circle 300 feet in diameter, and

(3) was constructed prior to June 11, 1973; Those constructed after June 11, 1973, may be subject to 20.11.63 NMAC, New Source Performance Standards.

S. **"Strip"** means to subject contaminated liquid to direct contact with a gaseous medium so that contamination products are transferred from the liquid to the gas, such as in a packed column.

T. **"Submerged fill pipe"** means any fill pipe, the discharge opening of which is entirely submerged when the fluid level is six (6) inches above the bottom of the container.

U. **"Transportable container"** means a gasoline or other organic fluid-containing vessel and its ancillary plumbing fixtures with a capacity greater than 500 gallons which is mounted on a truck or trailer chassis licensed for bulk movement of organic fluids by way of public roadways.

V. **"Underground storage tank"** means any single vessel buried or installed below ground and used for holding gasoline at a facility having an annual total volume of use and/or sale in excess of 100,000 gallons of gasoline.

W. **"Vapor pressure"** means the true vapor pressure of the fluid mixture vapors as could reasonably be expected under the actual storage conditions. This would be the equilibrium.

X. **"Ventilation"** means to evaporate and flush VOC's from contaminated soil by increasing soil by increasing soil temperature and/or exposing it to air, steam or any other working gases.

Y. **"Volatile organic compound (VOC)"** means any organic compound which participates in atmospheric photochemical reactions; or which is measured by a federal EPA reference method, an equivalent method, an alternative method, or which is determined by procedures specified under any subpart of 40 CFR 60 of the federal Code of Regulations.

[3/23/87. . .12/1/95; 20.11.65.7 NMAC - Rn, 20 NMAC 11.65.I.7, 10/1/02]

20.11.65.8 **VARIANCES:** [Reserved]

[12/1/95; 20.11.65.8 NMAC - Rn, 20 NMAC 11.65.I.8, 10/1/02]

20.11.65.9 SAVINGS CLAUSE: Any amendment to 20.11.65 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation 11, or 20.11.65 NMAC. 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.
[12/1/95; 20.11.65.9 NMAC - Rn, 20 NMAC 11.65.I.9, 10/1/02]

20.11.65.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of 20.11.65 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 20.11.65 NMAC.
[12/1/95; 20.11.65.10 NMAC - Rn, 20 NMAC 11.65.I.10, 10/1/02]

20.11.65.11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.
[12/1/95; 20.11.65.11 NMAC - Rn, 20 NMAC 11.65.I.11 & A, 10/1/02]

20.11.65.12 STORAGE OF GASOLINE IN STATIONARY CONTAINERS GREATER THAN 40,000 GALLONS CAPACITY: No person shall load, store, or hold gasoline in any stationary container of more than 40,000 gallons capacity, unless such container is a pressure vessel capable of maintaining working pressures sufficient at all times to prevent gasoline vapor loss to the atmosphere, or designed and equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:

A. A floating roof; consisting of a pontoon-type or double-deck-type roof, resting on the surface of the fluid contents and equipped with a closure seal, or seals, to close the space between the roof edge and container wall. The control equipment provided for in this subsection shall not be used if the gasoline has a vapor pressure of 9.0 psia or greater under actual storage conditions. All container gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

B. A vapor recovery system; consisting of a vapor gathering system capable of collecting the vapors and gases discharged and a vapor disposal system capable of processing such vapors and gases so as to emit no greater than 1.24 pounds of VOC's per 1000 gallons transferred with all container gauging and sampling devices gas-tight except when gauging or sampling is taking place.

C. Other equipment; which is an equivalent approved by the Director.

[12/1/95; 20.11.65.12 NMAC - Rn, 20 NMAC 11.65.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.65.II.1, 10/1/02]

20.11.65.13 LOADING OF GASOLINE FROM A LOADING RACK WITH A 30-DAY THROUGHPUT GREATER THAN 600,000 GALLONS: No person shall load gasoline from a loading rack having a 30-day throughput greater than 600,000 gallons of gasoline into any tank truck, trailer, or railroad tank car unless the loading rack is equipped with a vapor collection and disposal system or its equivalent approved by the Director.

A. Loading shall be accomplished in such a manner that displaced vapor and air will be vented only to the vapor collection system. Measures shall be taken to prevent fluid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected.

B. The vapor disposal portion of the vapor collection and disposal system shall consist of one of the following:

(1) A vapor recovery or disposal system which will recover or dispose of all the organic vapors and gases vented to it in such a manner that the emissions to the atmosphere do not exceed 1.24 pounds of VOC's per 1,000 gallons of organic fluids transferred by the equipment being controlled.

(2) A continuously operating smokeless flare or waste heat boiler operated at a continuous combustion efficiency sufficient to meet the following smoke opacity criteria. No person, in operating a smokeless flare for the purposes of 20.11.65 NMAC, shall cause, suffer, or allow visible emissions greater than 5% opacity.

(3) Other equipment which is equivalent approved by the Director.

[12/1/95; 20.11.65.13 NMAC - Rn, 20 NMAC 11.65.II.2, 10/1/02]

20.11.65.14 TRANSPORT AND DELIVERY OF GASOLINE BY MOBILE TANK TRUCKS OR TRAILER: No person shall unload gasoline from any gasoline transport truck or trailer to a user within the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board without meeting the following requirements:

A. Delivery of Gasoline into Underground Storage Tanks:

(1) No person shall unload gasoline into any underground storage tank with a capacity of 3,000 gallons or more unless such tank is equipped with an approved vapor loss control system, including a submerged fill pipe, in which displaced vapors from the underground storage tank are either contained or are processed such that final emissions to the atmosphere do not exceed 1.15 pounds of VOC's per 1,000 gallons of gasoline loaded.

(2) No person shall unload gasoline into any underground storage tank with a capacity of greater than 500 gallons and less than 3,000 gallons unless such tank is equipped with a securely fastened submerged fill pipe or an approved vapor recovery system.

B. The transportable container of gasoline shall be sealed to prevent the loss of gasoline liquids or vapors or the entrance of ambient air into the container when transporting or unloading gasoline into any underground storage tank having a capacity greater than 3,000 gallons.

C. No person unloading gasoline from a transportable container into an underground storage tank of greater than 3,000 gallons capacity shall cause or allow the flow of gasoline through the product connecting hose until the return vapor recovery hose is attached and properly connected and sealed.

D. No person unloading gasoline from a transportable container into an underground storage tank greater than 3,000 gallons capacity shall cause or allow the continuation of product delivery if there is an apparent leakage of liquid gasoline from any point in the delivery system.

[12/1/95; 20.11.65.14 NMAC - Rn, 20 NMAC 11.65.II.3, 10/1/02]

20.11.65.15 GASOLINE HANDLING AND HOLDING AT RETAIL OR FLEET SERVICE STATIONS: No person shall allow loading of gasoline into an underground storage tank with greater than 3,000 gallons capacity, unless it is equipped with an approved vapor loss control system, including a submerged fill pipe, in which the displaced vapors are either continuously contained or processed such that the emission of gasoline vapors to the atmosphere do not exceed 1.15 pounds of gasoline per 1,000 gallons loaded into said tank. Liquid gasoline dispensing from the underground storage tank as well as momentary opening of the system for gasoline gauging purposes shall not be considered as vapor loss in the requirement of this Section.

[12/1/95; 20.11.65.15 NMAC - Rn, 20 NMAC 11.65.II.4, 10/1/02]

20.11.65.16 ORGANIC FLUIDS EXEMPT FROM VAPOR LOSS CONTROL UNDER 20.11.65 NMAC: The handling, transport, loading, storage, or dispensing of organic fluid such as diesel fuels numbers 2-D and 4-D as specified by ASTM D975-78, fuels oils number 2 through 6 as specified by ASTM D396-78, and jet aircraft and gas turbine fuel oils number 2-GT through 4-GT as specified by ASTM D2880-82 and D1655-85A shall be exempt from vapor loss controls of this Part.

[12/1/95; 20.11.65.16 NMAC - Rn, 20 NMAC 11.65.II.5, 10/1/02]

20.11.65.17 INDUSTRIAL HANDLING, STORAGE, OR USE OF ORGANIC FLUIDS AND GASES NOT OTHERWISE ADDRESSED IN 20.11.65 NMAC: No person shall operate an industrial processor material handling, transport, or delivery system which would have a potential emission rate greater than either 100 pounds of organic vapors in any single 24 hour day or 10 pounds per hour without operating with the following level of emission controls:

A. Organic Fluids and Gases with a vapor pressure greater than 15.0 psia; shall be continuously contained in pressurized containers and handling systems designed and capable of holding, process handling, and use of said organic fluids and gases such that no more than 2.2 pounds of organic vapors are emitted into the atmosphere for every 6,000 gallons loaded, transferred, or used in any process including making and braking the connections of product lines and operation of valves.

B. Organic Fluids and Gases with a vapor pressure less than 15.0 psia, but greater than 1.5 psia; shall not be loaded, transferred or used in any process in monthly quantities greater than 1,000 pounds unless there is a system of organic vapor emission control such that no more than 2.2 pounds of organic vapors will be emitted for every 1,000 gallons of use of such organic fluid or gas.

C. Organic Fluids and Gases with a vapor pressure less than 1.5 psia; under conditions of actual exposure to the atmosphere shall be exempt from the requirements of 20.11.65 NMAC.

[12/1/95; 20.11.65.17 NMAC - Rn, 20 NMAC 11.65.II.6, 10/1/02]

20.11.65.18 CUTBACK ASPHALT:

A. No person shall cause, allow, or permit the use of cutback asphalt in quantities greater than 100 pounds per application directly onto existing or new paved surfaces without first obtaining a permit for such use from the Department.

B. The Director of the Department may only issue a permit to use cutback asphalt if it is determined, based on information supplied by the applicant, that less than 25 tons per year of VOC's will be emitted to the ambient air as a result of the activities approved under the permit.

C. **Penetrate Uses**: for the purposes of this subsection, asphalt cement cut with naphtha for the purposes of getting surface penetration into existing driveway and parking lot surfaces shall be exempt from the requirements of Subsections A and B of 20.11.65.18 NMAC. However, this exemption does not apply between the dates of June 15 through September 15. During the period of June 15 through September 15 a permit for such operation shall be required and the Department shall consider the annual 25-ton limitation to apply entirely within the three-month span of this requirement.

[12/1/95; 20.11.65.18 NMAC - Rn, 20 NMAC 11.65.II.7, 10/1/02]

20.11.65.19 CONTAMINATED SOILS AND/OR GROUNDWATER TREATMENT:

A. Applicability:

(1) Existing decontamination facilities; shall comply with the provisions of this subsection no later than June 1, 1991.

(2) New decontamination facilities; which are authorized by an Authority-to-Construct permit issued by the Department, shall comply with the provisions of this subsection immediately upon startup.

B. VOC Emission Controls Required: No person shall strip or extract VOC's from contaminated soils or water or regenerate or reactivate a VOC collecting material used within a pollution control device such that emissions to the ambient air be in excess of Albuquerque/Bernalillo County Air Quality Control Board, Ambient Air Quality Standards.

C. VOC Emission Controls - Exceptions: Site excavation to examine tanks and other underground conditions shall be exempt from this provision. Aeration of wastewater at sewage treatment facilities shall be exempt from this subsection.

D. Testing and Reporting:

(1) Emission testing shall be performed by the operator of the stripper/extracting operation to insure pollution control device efficiency. Performance testing shall be performed and reported within 30 days from startup and quarterly thereafter throughout the active life of the project. This provision may be suspended, with the Director's approval, upon receipt of the operator's petition demonstrating emissions have declined to negligible quantities. Testing shall quantify the emissions of VOC from each emission point of the pollution control device using EPA Method 25 - Determination of Total Gaseous Non-methane Organic Emissions as Carbon as published in 40 CFR 60 Appendix A, or an equivalent method approved by the Director. In addition, testing shall quantify all hazardous air pollutants as listed in 40 CFR 61.01(a) and (b). This emissions testing shall be performed by EPA Method 18 - Measurement of Gaseous Organic Compound Emissions By Gas Chromatography as published in 40 CFR 60 Appendix A or equivalent. After the initial report, the emissions shall be tested no less frequently than annually to monitor any change in the emissions of hazardous air pollutants.

(2) All test reports shall be submitted to the Department within 45 days of the test date.

[3/23/87; 20.11.65.19 NMAC - Rn, 20 NMAC 11.65.II.8, 10/1/02]

HISTORY OF 20.11.65 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

Resolution No. 1, Air Pollution Control Regulations Of The Albuquerque Bernalillo County Air Quality Control Board, 8/6/71.

Regulation No. 1, Air Pollution Control Regulations, 6/6/73;

Regulation No. 1, Air Pollution Control Regulations, 7/19/73;

Regulation No. 1, Air Pollution Control Regulations, 3/21/77;

Regulation No. 11, Volatile Organic Compounds, 3/24/82;

Regulation No. 11, Volatile Organic Compounds, 3/23/87;

Regulation No. 11, Volatile Organic Compounds, 2/25/91.

History of Repealed Material: [Reserved]

Other History: Regulation No. 11, Volatile Organic Compounds, filed 2/25/91, was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.65, Volatile Organic Compounds, filed 10/27/95.

20 NMAC 11.65, Volatile Organic Compounds, filed 10/27/95, was **renumbered, reformatted, amended and replaced** by 20.11.65 NMAC, Volatile Organic Compounds, effective 10/1/02.

PENGAD 800-631-6989 AQD EXHIBIT 1 d

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 69 PATHOLOGICAL WASTE DESTRUCTORS

20.11.69.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) [~~768-2600~~] 768-2601.
[5/13/92. . .12/1/95; 20.11.69.1 NMAC - Rn, 20 NMAC 11.69.I.1, 10/1/02]

20.11.69.2 SCOPE:

A. The requirements of 20.11.69 NMAC apply to the owner or operator of any pathological waste destructor (PWD).

B. EXEMPT: 20.11.69 NMAC does not apply to sources within Bernalillo County which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.
[5/13/92; 20.11.69.2 NMAC - Rn, 20 NMAC 11.69.I.2, 10/1/02]

20.11.69.3 STATUTORY AUTHORITY: 20.11.69 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.
[5/13/92, 12/1/95; 20.11.69.3 NMAC - Rn, 20 NMAC 11.69.I.3, 10/1/02]

20.11.69.4 DURATION: Permanent.
[12/1/95; 20.11.69.4 NMAC - Rn, 20 NMAC 11.69.I.4, 10/1/02]

20.11.69.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.
[12/1/95; 20.11.69.5 NMAC - Rn, 20 NMAC 11.69.I.5 & A, 10/1/02]

20.11.69.6 OBJECTIVE: The objective of 20.11.69 NMAC is to assure that the citizens of Bernalillo County are not needlessly exposed to infectious or toxic substances in the air, which pathological waste destructors, might otherwise emit.
[5/13/92; 20.11.69.6 NMAC - Rn, 20 NMAC 11.69.I.6, 10/1/02]

20.11.69.7 DEFINITIONS: In addition to the definitions in 20.11.69.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.69 NMAC shall govern.

A. "Charging Capacity" means the pathological waste destructor manufacturers or designers rated capacity expressed in terms of pounds per hour (lb/hr).

B. "Charging Rate" means the actual rate at which the subject unit is burning waste at a given point in time expressed in terms of pounds per hour (lb/hr).

C. "Chemotherapeutic Waste" means all wastes resulting from the production or use of anti-neoplastic agents used for the purpose of stopping or reversing the growth of malignant cells. Chemotherapeutic wastes shall not include any waste containing anti-neoplastic agents that are listed as hazardous waste.

D. "Continuous Emission Monitor" means the total equipment required to sample and analyze emissions or process parameters on a continuous basis.

E. "DSCF" means dry standard cubic foot with standard conditions being a temperature of 68 degrees F and a pressure of 29.92 inches Hg.

F. "DSCM" means dry standard cubic meter with standard conditions being a temperature of 68 degrees F and a pressure of 29.92 inches Hg.

G. "gr" means grains.

H. "Hazardous Waste" means hazardous waste as defined in 40 CFR Part 261.3 as amended.

I. "Infectious Waste" means a limited class of substances that carry a significant risk of transmitting disease, including but not limited to:

(1) microbiology laboratory wastes, including cultures and stocks of infectious agents from clinical research and industrial laboratories, and disposable culture dishes and devices used to transfer, inoculate and mix cultures,

(2) pathological wastes, including human or animal tissues, organs and body parts, removed during surgery, autopsy or biopsy,

(3) disposable equipment, instruments, utensils, and other disposable materials which require special precautions because of contamination by highly contagious diseases,

(4) blood and blood products, including waste blood, blood serum, plasma and blood products,

(5) contaminated sharps, including contaminated hypodermic needles, syringes, scalpel blades, Pasteur pipettes and broken glass, and

(6) contaminated animal carcasses, body parts and bedding, especially those intentionally exposed to pathogens in research, in the production of biologicals or the "in vivo" testing pharmaceutical.

J. **"mg"** means milligrams.

K. **"ng"** means nanogram.

L. **"Opacity"** means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

M. **"Operation"** means the acts of ash removal, preheating of combustion unit, waste loading, combustion, burn down and cool down.

N. **"Pathological Waste"** means infectious wastes, chemotherapeutic wastes; wastes generated in health care facilities, medical laboratories and veterinary clinics that require special handling. Chemotherapeutic waste means all wastes resulting from the production or use of anti-neoplastic agents used to stop or reverse the growth of malignant cells excluding those listed as hazardous wastes. Specifically excluded from this definition are human or animal remains consisting of cadavers, carcasses, tissues, organs and/or body parts covered under 20.11.68 NMAC, Incinerators and crematories.

O. **"Pathological Waste Destructors"** means any equipment, which is used to dispose of pathological waste by combustion.

P. **"PCDD/PCDF"** means total tetra-through octa-chlorinated dibenzo-para-dioxins and dibenzo furans.

Q. **"Shutdown"** means the cessation of all waste charging operations.

R. **"Startup"** means the setting into operation of any air pollution control equipment, process equipment or process for any purpose except routine phasing in of equipment.

S. **"Total Charging Capacity"** means the aggregate of all charging capacities of all pathological waste destructors located at a facility.

T. **"Unit"** means a combustion device otherwise called a pathological waste destructor.

[5/13/92. . .12/1/95; 20.11.69.7 NMAC - Rn, 20 NMAC 11.69.I.7, 10/1/02]

20.11.69.8 **VARIANCES:** [Reserved]

[12/1/95; 20.11.69.8 NMAC - Rn, 20 NMAC 11.69.8, 10/1/02]

20.11.69.9 **SAVINGS CLAUSE:** Any amendment to 20.11.69 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation 39, or 20.11.69 NMAC. 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.

[12/1/95; 20.11.69.9 NMAC - Rn, 20 NMAC 11.69.I.9, 10/1/02]

20.11.69.10 **SEVERABILITY:** If any section, paragraph, sentence, clause, or word of this Part 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 20.11.69 NMAC.

[12/1/95; 20.11.69.10 NMAC - Rn, 20 NMAC 11.69.I.10, 10/1/02]

20.11.69.11 **DOCUMENTS:** Documents incorporated and cited in 20.11.69 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.69.11 NMAC - Rn, 20 NMAC 11.69.I.11 & A, 10/1/02]

20.11.69.12 **CONDITIONS:**

A. A PWD may only be used to destroy pathological waste that has been generated at the site where the unit is located.

B. No one shall burn material marked with radiation symbols or material having a radioactivity level greater than background, in a unit subject to 20.11.69 NMAC.

C. Hazardous waste may not be burned in a unit subject to 20.11.69 NMAC.

D. No PWD shall be used to incinerate non-pathological waste.

[5/13/92; 12/1/95; 20.11.69.12 NMAC - Rn, 20 NMAC 11.69.I.12 & Repealed; 10/1/02; Rn, 20 NMAC 11.69.II.1, 10/1/02]

20.11.69.13 EMISSION LIMITS:

No owner or operator shall cause or allow exceedence of the following emission limits: (Particulate matter emissions are measured at 12 percent CO_2. All other emissions are measured at 7 percent 0_2. Opacity shall never exceed 10 percent).

(1) For PWDs with a charging capacity of less than 200 lb/hr:

(a) Particulate matter 0.08 gr/dscf
(b) Hydrogen chloride 4 lb/hr or 99 percent control, whichever is more stringent
(c) Carbon monoxide 60 mg/dscm
(d) PCDD/PCDF 500 ng/dscm

(2) For PWDs with a charging capacity of 200 lb/hr to 999 lb/hr: (For all metals except mercury, a cadmium surrogate emission limit of 50 µg/kg of waste burned may be used).

(a) Particulate matter 0.03 gr/dscf
(b) Hydrogen chloride 40 mg/dscm
(c) Carbon monoxide 60 mg/dscm
(d) PCDD/PCDF 5 ng/dscm
(e) Oxides of nitrogen 235 mg/dscm
(f) Sulfur dioxide 80 mg/dscm
(g) Arsenic 99 percent removal
(h) Beryllium 99 percent removal
(i) Cadmium 99 percent removal
(j) Chromium 99 percent removal
(k) Lead 99 percent removal
(l) Mercury 90 percent removal

(3) For PWDs with a charging capacity of greater than 100 lb/hr: (For all metals except mercury, a cadmium surrogate emission limit of 50 µg/kg of waste burned may be used).

(a) Particulate matter 0.015 gr/dscf
(b) Hydrogen chloride 40 mg/dscm
(c) Carbon monoxide 60 mg/dscm
(d) PCDD/PCDF 5 ng/dscm
(e) Oxides of nitrogen 235 mg/dscm
(f) Sulfur dioxide 80 mg/dscm
(g) Arsenic 99 percent removal
(h) Beryllium 99 percent removal
(i) Cadmium 99 percent removal
(j) Lead 99 percent removal
(k) Mercury 90 percent removal

[5/13/92; 20.11.69.13 NMAC - Rn, 20 NMAC 11.69.II.2, 10/1/02]

20.11.69.14 COMPLIANCE:

A. Compliance with the carbon monoxide (CO) emission limitation, for units required to have continuous CO monitoring, shall be determined by continuous emission monitor measurements calculated in 4-hour block averages. For units not equipped with continuous CO monitoring equipment, compliance shall be determined by manual tests as specified in 20.11.69.21 NMAC.

B. Compliance with particulate matter, sulfur dioxide, nitrogen dioxide, hydrogen chloride, PCDD/PCDF, and metals emission limitations shall be determined by manual tests as specified in 20.11.69.21 NMAC. For metals, the removal percentage is calculated as the percent difference between the measured concentrations at the inlet and outlet of the air pollution control system.

C. As surrogate for compliance with metals removal efficiency requirements, the owner or operator may comply with an emission limitation for cadmium (Cd) of 50 micrograms per kilogram of waste burned. The emission limit for cadmium cannot be used as surrogate for mercury.

D. Compliance with the opacity limit in Subsection A of 20.11.69.12 NMAC shall be determined by continuous emission monitor measurements and 40 CFR Part 60, Appendix A, Method 9 as amended, calculated in the form of 6-minute averages.

E. The owner or operator of a PWD with a total charging capacity of 400 pounds per hour or less may obtain a written exemption from the Albuquerque/Bernalillo County AQCB from the applicable emission limits set forth in 20.11.69.13 NMAC and may obtain a written exemption from the Albuquerque/Bernalillo County AQCB from emission monitoring requirements as stated in Paragraph (3), of Subsection A of 20.11.69.18 NMAC provided that:

(1) the owner or operator complies with the emission limits set forth in 20.11.69.12 NMAC for PWDs with a total charging capacity of less than 200 pounds per hour, and

(2) the owner or operator obtains a written exemption from the Albuquerque/Bernalillo County AQCB that contains a condition limiting the operation of such PWD to six hours in any one day. The violation of such an exemption condition shall be a violation of 20.11.69 NMAC.

[5/13/92; 20.11.69.14 NMAC - Rn, 20 NMAC 11.69.II.3, 10/1/02]

20.11.69.15 DESIGN REQUIREMENTS:

A. All units shall be equipped with a secondary combustion chamber, which provides turbulent mixing of the secondary air with the combustion gases. The secondary combustion chamber shall provide one second of residence time, measured from the point of maximum temperature considering design-specific furnace parameters including chamber volume, volumetric airflow rate, and excess air rate.

B. Primary combustion chamber temperature must be maintained at not less than 1400 degrees F.

C. Secondary combustion chamber temperature must be maintained at not less than 1800 degrees F.

D. Auxiliary burners must be designed to provide the required combustion chamber temperatures described in Subsections B and C of 20.11.69.17 NMAC without utilization of the heat content of the waste. The auxiliary burner fuel and the combustion air shall be controlled automatically to maintain the required temperatures.

E. The charging system of any unit must be designed to prevent disruption of the combustion process. Batch charged units must be equipped with a lockout mechanism to prevent charging after start-up. Units with automatic charging systems shall be equipped with a sealed feeding device to prevent combustion upsets during charging. The loading system shall be designed to prevent overcharging.

F. For batch charged units, waste shall be not ignited until the secondary chamber exit temperature is at 1800 degrees for at least fifteen minutes. Interlocks must prevent opening the charging door after ignition, until the burn-down and cool-down periods are complete.

G. For continuously charged units, an interlock system must automatically stop waste feeding if:

(1) the unit's secondary chamber temperature drops below 1800 degrees F for any 15-minute period, or

(2) the carbon monoxide emissions, corrected to 7 percent 0_2 on a dry basis are equal to or greater than 50 ppm by volume, for any 15-minute period.

[5/13/92; 20.11.69.15 NMAC - Rn, 20 NMAC 11.69.II.4, 10/1/02]

20.11.69.16 STACK HEIGHT REQUIREMENTS:

A. Exhaust stack height for all PWDs shall be determined as the greater of:

(1) Hg=H + 1.5L; where Hg =required stack height measured from the ground-level elevation at the base of the stack; H=Height of nearby structure(s) measured from the ground-level elevation at the base of the stack, and L=Lesser dimension, height or projected width, of nearby structure(s). Provided that the Department may require the use of a field study or dispersion model to verify adequate stack height for the source; or

(2) The height demonstrated by a dispersion model or a field study approved by the Department, which ensures that the emissions from the stack do not result in excessive concentration of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(3) The definitions in 40 CFR Sections 51.100(Z),(ff), and (hh)-(kk) (1987) as amended are hereby incorporated in 20.11.69 NMAC.

[5/13/92; 20.11.69.16. NMAC - Rn, 20 NMAC 11.69.II.5, 10/1/02]

20.11.69.17 OPERATING REQUIREMENTS:

A. The owner or operator of a PWD shall not manually charge the primary combustion chamber through doors open to the atmosphere while the unit is operating. Charging of waste for units other than batch units shall be by mechanical means, which prevents upsets in the burn cycle.

B. Each unit shall operate so that during shutdown the unit continues to meet applicable emission limitations and the secondary combustion chamber temperature is maintained at 1800 degrees F or above until the waste is completely burned.

C. Units utilizing control devices to attain emission limits must be designed such that the flue gas temperature at the outlet of the final control device does not exceed 300 degrees F unless a demonstration is made that an equivalent collection (removal) of heavy metals and toxic organics can be achieved at a higher temperature or through the use of alternate technologies.

[5/13/92; 20.11.69.17 NMAC - Rn, 20 NMAC 11.69.II.6, 10/1/02]

20.11.69.18 EMISSION MONITORING:

A. **Continuous emission monitors** (CEM)s shall be installed, calibrated, maintained, and operated, and shall continuously record data for the following:

(1) For PWDs with a total charging rate of 1000 pounds per hour or greater:

(a) carbon monoxide (CO);

(b) oxygen (O_2);

(c) opacity.

(2) If an opacity monitor cannot be applied satisfactorily, alternate apparatus may be employed, on a case by case basis, with the written approval of the Department, to demonstrate acceptable operation of the particulate removal device.

(3) For PWDs with a total charging capacity of less than 1000 pounds per hour:

(a) oxygen (O_2);

(b) carbon monoxide (CO).

B. The owner or operator of any unit shall install, calibrate, maintain and operate equipment to continuously record the temperature of gases leaving the primary and secondary combustion chambers and the outlet of the final air pollution control device, if present. Such equipment shall have an accuracy of plus or minus 0.75 percent of the temperature being measured expressed in degrees Celsius or plus or minus 2.5 degrees C, whichever represents greater accuracy. Sensors shall be located so that flames from the burners do not impinge on the sensors.

C. At least ninety days prior to initial startup, the owner or operator shall submit a report the Department which describes, for each monitor, the location, specifications, calibration procedures, operation, maintenance, data evaluation, and reporting. Monitoring equipment shall not be installed prior to Department approval of the report.

D. The continuous emission monitors for oxygen (O_2) and carbon monoxide (CO) shall complete a minimum of one operation cycle for each successive 15-minute period. One-hour averages shall be calculated from four (4) or more data points equally spaced over each one-hour period.

E. The continuous opacity monitor shall complete a minimum of one operational cycle for each successive ten-second period. Six-minute averages shall be calculated from thirty-six or more data points equally spaced over each six-minute period.

F. Data recorded during periods of continuous emission monitor breakdown; repairs, calibration checks, and zero and span adjustments shall not be included in calculated data averages.

G. Emission data capture rate for each continuous emission monitor must be a minimum of 75 percent of all operational hours for each twenty-four hour period beginning at midnight. Failure to meet this data capture requirement shall cause the pathological waste destructor to be shutdown as required by 20.11.69.19 NMAC.

H. The owner or operator shall ensure that each continuous emission monitor meets the requirements of 40 CFR Part 60, Appendix F Quality Assurance Procedures as amended and shall submit to the Department, all reports specified in this Part. The required reports shall be submitted quarterly.

[5/13/92; 20.11.69.18 NMAC - Rn, 20 NMAC 11.69.II.7, 10/1/02]

20.11.69.19 CONTINUOUS EMISSION MONITOR MALFUNCTION: Whenever any required continuous emission monitor cannot meet the data capture requirement of Subsection G of 20.11.69.18 NMAC, and the owner or operator does not obtain the required data from an alternate monitor or test method, the PWD shall cease operation until it can comply with Subsection G of 20.11.69.18 NMAC.

[5/13/92; 20.11.69.19 NMAC - Rn, 20 NMAC 11.69.II.8, 10/1/02]

20.11.69.20 CEM PERFORMANCE EVALUATION:

A. During or within thirty days of the emission tests required by 20.11.69.21 NMAC, the owner or operator shall conduct a performance evaluation of each continuous emissions monitor in accordance with the procedures of 40 CFR Part 60, Appendix B - Performance Specification as amended.

B. The performance evaluation required by Subsection A of 20.11.69.20 NMAC shall be repeated on an annual basis or after any major equipment malfunction which requires component replacement, or at additional times when the Department has reason to believe the monitor performance is inadequate.

C. The owner or operator shall provide at least thirty days prior notice to the Department before conducting any performance evaluation.

D. A written report of each performance evaluation shall be furnished to the Department within thirty days from the end of the test period.

[5/13/92; 20.11.69.20 NMAC - Rn, 20 NMAC 11.69.II.9, 10/1/02]

20.11.69.21 EMISSION TESTING:

A. Within sixty days of first achieving the maximum charging rate, but not more than one hundred eighty days from the date of initial startup, the first annual performance test shall be conducted.

B. The owner or operator of any PWD that has a charging capacity of less than 200 pounds per hour shall conduct an annual performance test to demonstrate compliance with the emission standards for particulate matter (PM), carbon monoxide (CO) and hydrogen chloride (HCl).

(1) The initial performance test for units subject to Subsection B of 20.11.69.20 NMAC shall include PCDD/PCDF and the following metals:

(a) arsenic and compounds (expressed as arsenic)
(b) beryllium and compounds (expressed as beryllium)
(c) cadmium and compounds (expressed as cadmium)
(d) chromium and compounds (expressed as chromium)
(e) lead and compounds (expressed as lead)
(f) mercury and compounds (expressed as mercury)

(2) The required performance test for PCDD/PCDF and metals shall be conducted once, provided that PCDD/PCDF and metals emission test results indicate compliance with the standard set forth in Subsection A of 20.11.69.13 NMAC.

C. The owner or operator of any PWD with a charging capacity of 200 pounds per hour or greater shall conduct a performance test to demonstrate compliance with the standards for particulate matter (PM), carbon monoxide (CO), hydrogen chloride (HCl), sulfur dioxide (SO_2), nitrogen dioxide (NO_2), total tetra-through octa-chlorinated dibenzo-para-dioxins and dibenzo furans (PCDD/PCDF);

(1) and the following metals:

(a) arsenic and compounds (expressed as arsenic)
(b) beryllium and compounds (expressed as beryllium)
(c) cadmium and compounds (expressed as cadmium)
(d) chromium and compounds (expressed as chromium)
(e) lead and compounds (expressed as lead)
(f) mercury and compounds (expressed as mercury)

(2) Source tests shall be conducted annually for the above specified pollutants.

(3) The owner or operator may apply to the Department for a waiver of annual testing for a specific pollutant where performance testing has consistently shown emission rates for that pollutant which are less than those required in 20.11.69 NMAC, but in no case shall any required test be conducted less than once in every three years.

D. All performance testing shall be conducted at the design charging capacity using waste that is representative of normal operation while being operated by the facility operator.

E. The Department may require additional testing if there is a reasonable basis to believe the facility is not in compliance with any provision of 20.11.69 NMAC or any applicable permit condition.

F. The Department or its representative may conduct unscheduled emission tests at any time during operating hours of the facility.

[5/13/92; 12/1/95; 20.11.69.21 NMAC - Rn, 20 NMAC 11.69.II.10, 10/1/02]

20.11.69.22 TEST PROCEDURES:

A. Notice of the test date and a copy of the test protocol shall be submitted to the Department at least thirty days prior to the actual test date.

B. A representative of the Department shall be given the opportunity to be present during all emissions test required by 20.11.69 NMAC.

C. A written copy of all test results shall be furnished to the Department within sixty days from the test date.

D. Emission tests shall be conducted utilizing the following methods:

(1) for total particulate matter 40 CFR Part 60, Appendix A, Methods 1 - 5 as amended,

(2) for PCDD/PCDF 40 CFR Part 60, Appendix A, Method 23 as amended,

(3) for cadmium chromium, and lead 40 CFR Part 60, Appendix A., Methods 1 - 4 and 12 as amended,

(4) for arsenic 40 CFR Part 61, Appendix B, Method 108 as amended,

(5) for beryllium 40 CFR Part 61, Appendix B, Method 104 as amended,

(6) for mercury 40 CFR Part 61, Appendix B., Method 101A as amended,

(7) for opacity 40 CFR Part 60, Appendix A, Method 9 as amended,

(8) for hydrogen chloride 40 CFR Part 60, Appendix A, Method 26 as amended,

(9) for carbon monoxide 40 CFR Part 60, Appendix A, Method 10 as amended,

(10) for sulfur dioxide 40 [~~CRF~~] CFR Part 60, Appendix A, Method 6 as amended, and

(11) for nitrogen oxide 40 CFR Part 60, Appendix A, Method 7 as amended.

E. The owner or operator may use test methods other than those in Subsection D of 20.11.69.22 NMAC if the Department has approved the alternate test method prior to the test date. The Department shall rule on proposed alternate test method acceptability within thirty days of receipt of the proposal.

[5/13/92; 12/1/95; 20.11.69.22 NMAC - Rn, 20 NMAC 11.69.II.11, 10/1/02]

20.11.69.23 QUARTERLY REPORT: The owner or operator shall submit a report containing the following information to the Department within thirty days from the end of each calendar quarter:

A. The average hourly charging rate to each unit.

B. The thirty-minute average temperatures of the primary chamber, the secondary chamber, and the outlet from the final air pollution control device.

C. The hourly and four-hour average concentrations of carbon monoxide (CO) in mg/dscm, corrected to 7 percent O_2 as measured by continuous emission monitors.

D. The hourly average percent oxygen (O_2) and six-minute average opacity as measured by continuous emission monitors.

E. The percent data capture for each twenty-four hour period for each continuous emission monitor.

F. The identification of all periods of startup, shutdown, and excess emissions.

G. The reason for any excess emissions and the corrective action taken.

[5/13/92; 20.11.69.23 NMAC - Rn, 20 NMAC 11.69.II.12, 10/1/02]

20.11.69.24 RECORDS:

A. The owner or operator shall maintain records for a period of three years from the date created, for all parameters required in 20.11.69 NMAC and shall make them available upon request for inspection and copying by the Department.

B. All information submitted to the Department in quarterly reports or emission test reports, or any other information created or obtained by the Department regarding the PWD shall be available during business hours at the Department's offices for public inspection and copying. Table 1 of 20.11.69 NMAC summarizes reporting requirements and their respective due dates.

[5/13/92; 20.11.69.24 NMAC - Rn, 20 NMAC 11.69.II.13, 10/1/02]

20.11.69.25 UPSET CONDITION:

A. The provisions of [~~20.11.90 NMAC~~] 20.11.49 NMAC shall not apply to any PWD.

B. Whenever the temperature requirements of Sections 203 or 205 of 20.11.69 NMAC or any emission limit in 20.11.69.13 NMAC for which compliance is based on continuous emissions monitoring, is exceeded, the operator shall take the following actions:

(1) cut off waste charging to the combustion unit,

(2) notify the Department verbally of the exceedence within four hour of its occurrence or prior to twelve noon of the next business day should the exceedence occur during non-business hours,

(3) note in the operating record the time and date of the exceedence, when shutdown began, and when shutdown was complete,

(4) identify and correct the cause of the upset condition before resuming operation of the unit, and

(5) note in the operating record the corrective action taken and the time and date of startup.

[5/13/92; 20.11.69.25 NMAC - Rn, 20 NMAC 11.69.II.14, 10/1/02]

20.11.69.26 HANDLING, STORAGE, AND TRANSPORTATION OF ASH:

A. All handling and storage of fly ash and bottom ash shall be conducted in a closed system, which prevents ash from becoming airborne.

B. Transporters of pathological waste destructor ash (PWD ash):

(1) Shall not accept or transport PWD ash unless it has been treated or is securely covered to prevent release of fugitive dust;

(2) Shall line or seal vehicles to prevent any leakage of liquids;

(3) There shall be no visible emissions (0 percent opacity) resulting from handling, storage, or transportation of PWD ash. Compliance with this requirement shall be determined by visual observation as specified in 40 CRF Part 60, Appendix A, Method 9 as amended.

[5/13/92; 20.11.69.26 NMAC - Rn, 20 NMAC 11.69.II.15, 10/1/02]

20.11.69.27 OPERATOR CERTIFICATION:

A. A certified operator shall be present at the facility whenever waste is being burned. The facility employed, unit operator will control the operation of the pathological waste destructor during performance testing.

B. All unit operators of their immediate supervisor on-site must have completed the certification training, as required and specified in the Training and Certification Procedures Document developed by the Department pursuant to 20.11.69 NMAC and approved by the Board.

[5/13/92; 20.11.69.27 NMAC - Rn, 20 NMAC 11.69.II.16, 10/1/02]

20.11.69.28 COMPLIANCE SCHEDULE FOR EXISTING PATHOLOGICAL WASTE DESTRUCTORS:

A. PWDs in existence before the effective date of this Part must achieve full compliance with this regulation within ten (10) days of the effective date of 20.11.69 NMAC. Each owner or operator of an existing PWD who intends to permanently cease operating the unit shall remove the unit from the facility within thirty days of the effective date of 20.11.69 NMAC. The Department shall be notified of the intent to cease operating within the ten (10) day period specified above. Each owner or operator of an existing PWD shall either demonstrate compliance with the requirements of 20.11.69 NMAC or seek an Assurance of Discontinuance from the Department within the ten (10) day period specified above.

B. Assurances of Discontinuance shall contain the following:

(1) owner or operator's name and address,

(2) date of submittal,

(3) description of facility,

(4) description of the property upon which the facility is located,

(5) The following increments of progress:

(a) a date or dates by which contracts for each major phase of construction or installation of emission control systems, or process modification, or orders for their component parts, will be awarded,

(b) a date or dates of initiation of each major phase of on-site construction or installation of emission control equipment or process modification,

(c) a date or dates by which each major phase of on-site construction or installation of emission control equipment or process modification is to be completed, and

(d) a date or dates by which final compliance is to be achieved (no later than Nov 30, 1992 for < (less-than) 200pounds/hr units; or April 1, 1993 for single chamber units and ≥ (greater-than-or-equal-to) 200pounds/hr units),

(e) a detailed description of the methods or devices to be used to achieve compliance.

[5/13/92; 20.11.69.28 NMAC - Rn, 20 NMAC 11.69.II.17, 10/1/02]

20.11.69.29 TRAINING AND CERTIFICATIONPROCEDURES DOCUMENT - PATHOLOGICAL WASTE DESTRUCTORS:

A. A certified pathological waste destructor (PWD) operator shall be present at the facility in which a PWD is located whenever waste is being burned. The facility-employed operator will control the operation of the PWD during performance testing.

B. All PWD operators or their immediate supervisor on-site must have completed the following certification training: Operator training shall include a program of study approved by the Department. The owner or operator shall submit a proposed program of study to include the following:

(1) proper waste handling,

(2) identification of waste types acceptable for combustion,

(3) PWD design and waste combustion theory,

(4) proper PWD startup, operation, shutdown, and maintenance procedures; (these procedures must follow the PWD manufacturer's recommendations),

(5) work safety procedures, including infectious disease control procedures for the facility,

(6) applicable air pollution, solid waste, and wastewater management regulations,

(7) air pollution control equipment operation and maintenance, and

(8) a minimum of two (2) turn cycles of hands-on PWD operation under the supervision of another certified operator or the PWD manufacturer's representative.

C. Operator certification training shall include an annual review lasting at least eight hours. The required review may contain but shall not be limited to reviews of operation and maintenance procedures, topic specific conferences, manufacturer's updates, and regulatory updates. The content of the annual review shall be approved the Department.

D. Every operator shall have visible proof of certification posted or filed the work area at the facility. [5/13/92. . .5/13/95; 12/1/95; 20.11.69.29 NMAC - Rn, 20 NMAC 11.69.II.18, 10/1/02]

20.11.69.30 PATHOLOGICAL WASTE DESTRUCTOR SUMMARY OF REPORTING REQUIREMENTS:

TABLE 1

Report/Description	Reference	Date due to Department
Notice of CEM performance evaluation.	Subsection C of 20.11.69.20 NMAC	At least 30 days prior to performance evaluation.
CEM performance evaluation.	Subsection D of 20.11.69.20 NMAC	Within 30 days from the end of the test period.
Notice of emission testing and test protocols.	Subsection A of 20.11.69.22 NMAC	At least 30 days prior to the actual test date.
Copy of emission test results.	Subsection C of 20.11.69.23 NMAC	Within 60 days from the test date.
Quarterly report of CEM and temperature monitoring results.	20.11.69.23 NMAC	Within 30 days of the end of each calendar quarter.
Notice of intent to cease unit operations.	Subsection A of 20.11.69.28 NMAC	Within 10 days of the effective date of this Part.
Compliance schedule/Assurance of Discontinuance	Subsection A of 20.11.69.28 NMAC	Within 10 days of the effective date of this Part.

[5/13/95; 20.11.69.30 NMAC - Rn, 20 NMAC 11.69.Table 1, 10/1/02]

HISTORY OF 20.11.69 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

Regulation No. 39, Pathological Waste Destructors, 6/16/92.

History of Repealed Material: [Reserved]

Other History: Regulation No. 39, Pathological Waste Destructors, filed 6/16/92 was **renumbered, reformatted,** and **amended** into first version of the New Mexico Administrative Code as 20 NMAC 11.69, Pathological Waste Destructors, filed 10/27/95.

20 NMAC 11.69, Pathological Waste Destructors, filed 10/27/95 was **renumbered, reformatted, amended and replaced** by 20.11.69 NMAC, Pathological Waste Destructors, effective 10/1/02.