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TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 41 AUTHORITY TO CONSTRUCT

20.11.41.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[3/21/77. . .12/1/95; 20.11.41.1 NMAC - Rn, 20 NMAC 11.41.I.1, 10/1/02]

20.11.41.2 SCOPE:

A. Exempt: This Part 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.

B. Applicability: Prior to commencement, any person planning to construct a new stationary source or modify an existing stationary source of air contaminants such that any of the following emissions thresholds, classifications, or kinds of permits apply as delineated in paragraphs (1) through (3) below, shall obtain a permit from the Department in accordance with the provisions of this Part.

(1) Emissions Thresholds Requiring a Permit:

(a) Any stationary source that will emit one or more regulated air contaminants for which there is a federal, state or local air quality control standard and any single one of which would exceed the following amounts when considered at the source's pre-controlled emission rate:

(i) ten (10) pounds per hour, or

(ii) twenty-five (25) tons per year.

(iii) Any person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard with a pre-controlled emission rate greater than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the modification.

(b) If either of these thresholds is exceeded for any regulated air contaminant, all regulated air contaminants emitted are subject to permit review. Within subsection B of 20.11.41.2 NMAC, the potential emission rate for nitrogen dioxide shall be based on total oxides of nitrogen.

(c) Any stationary source which will have a pre-controlled emission rate of lead (Pb), and its compounds, greater than five (5) tons per year measured by a reference method based upon 40 CFR 50, Appendix G.

(d) Any major stationary source or major modification, as defined by 20.11.60 NMAC, otherwise meeting the applicability requirements of this Part shall in addition be subject to the permit requirements of 20.11.60 NMAC - PERMITTING IN NONATTAINMENT AREAS, if either of the following conditions applies:

(i) The source is or will be located within a nonattainment area for any NAAQS and will emit the air contaminant or contaminants for which the area is in nonattainment, or will emit hydrocarbons in the case of ozone nonattainment; or

(ii) The source is or will be located in an area which is in attainment of the NAAQS for the air contaminant or air contaminants which the source will emit but the ambient impact of the emissions from the source will exceed the significance levels of Table 1 in 20.11.60 NMAC, before any consideration of emissions offsets or trades, at any location within an area which is in nonattainment for the air contaminant or air contaminants emitted by the source having such ambient impacts.

(2) Federal Source Classifications:

(a) If the applicant will be constructing, modifying or installing any equipment or process which is subject to 20.11.63 or 64 NMAC.

(b) If the source otherwise meets the applicability requirements of this Part but is a major stationary source or a major modification as defined in 20.11.61 NMAC, shall in addition be subject to the permit requirements of 20.11.61 NMAC.

(c) If the Department determines that the source will emit a significant amount of an air contaminant for which no federal emissions standard has yet been established but which has been listed in 40 CFR 61.01(b) along with the hazardous air pollutants.

(3) Additional Permit Details:

(a) If a source is comprised of more than one unit, a separate permit may be required for each unit which is not substantially interrelated with another unit. A common connection leading to ductwork, pollution control equipment or a single stack shall not, by itself, constitute a substantial interrelationship.

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(b) Although more than one permit regulation (i.e. 20.11.41, 60, 61, 63, and 64 NMAC) may apply to any stationary source nothing in this Part shall be construed to require more than one permit application for each unit proposed for construction or modification. Definitions and provisions contained in specific federal programs apply as pertains to permit review of any air contaminant and source regulated by the federal NSPS, NESHAP, prevention of significant deterioration, visibility or nonattainment requirements.

(c) For all sources subject to this Part, applications for Authority-to-Construct permits shall be filed prior to the commencement of construction, modification, or installation. Regardless of the anticipated commencement date, no construction, modification, or installation shall begin prior to issuance of the permit.

(4) Administrative Modifications: For existing permitted sources that do not otherwise meet the permit modification criteria found in this section, but who wish to voluntarily reduce their permitted emissions may do so through an administrative modification to their permit. Sources submitting an Authority-to-Construct application to reduce their permitted emissions through the administrative modification process will be exempted from the requirements of 20.11.41.12 NMAC, Fees for Permit Application Review, and 20.11.41.14 NMAC, Public Notice and Participation.

[3/24/82. . .7/21/87, 6/5/91, 12-16-94, 12/1/95; 20.11.41.2 NMAC - Rn, 20 NMAC 11.41.I.2, 10/1/02]

20.11.41.3 STATUTORY AUTHORITY: This Part 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; 20.11.41.3 NMAC - Rn, 20 NMAC 11.41.I.3, 10/1/02]

20.11.41.4 DURATION: Permanent.

[12/1/95; 20.11.41.4 NMAC - Rn, 20 NMAC 11.41.I.4, 10/1/02]

20.11.41.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.

[12/1/95; 20.11.41.5 NMAC - Rn, 20 NMAC 11.41.I.5 & A, 10/1/02]

20.11.41.6 OBJECTIVE: The objective of this Part is to insure that new facilities or modified existing facilities will not emit air pollution, which will cause violations of air pollution control regulations upon operation following construction. This procedure will protect the source owner's investment as well as uphold public concern and desire for input prior to commencement of construction of air pollution sources in Bernalillo County.

[6/5/91. . .12/1/95; 20.11.41.6 NMAC - Rn, 20 NMAC 11.41.I.6, 10/1/02]

20.11.41.7 DEFINITIONS: This Part as well as 20.11.1, 60, 61, 63 and 64 NMAC use terms with exclusive meanings applicable to construction or modification permits. Throughout these Parts the terms herein defined shall have the following meanings. If there is any apparent conflict among the use of said terms, the meaning specified in this Part shall prevail and apply.

A. "Air Pollution Control Equipment" means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

B. "Ambient Air" means the outdoor atmosphere, but does not include the area entirely within the geographical boundaries of the source from which the air contaminants are, or may be, emitted and where public access is restricted within such boundaries.

C. "Commence or Commencement" means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a binding contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

D. "Construction" means fabrication, erection, installation or relocation of a stationary source, including but not limited to temporary installations and portable stationary sources.

E. "Federal Clean Air Act or CAA" means the federal legislation pertaining to air pollution as amended, at 42 U.S.C. 7401, et seq.

F. "Hazardous Air Pollutant" means an air contaminant, which is listed as a hazardous air pollutant pursuant to Section 112 of the CAA.

G. "Malfunction" means any air pollution control equipment, process equipment or process which fails to operate in the manner or for the purpose for which it was designed.

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H. **"Modification** or **To Modify"** means to make any physical change in, or change in the method of operation of, a stationary source which results in an increase in the pre-controlled emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted. Relocation of a portable stationary source that is subject to Subsection B of 20.11.41.2 NMAC, unless within specified permit conditions, shall be considered a modification. These terms do not include:

(1) a change in ownership of the source,

(2) routine maintenance, repair or replacement,

(3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the CAA, or

(4) unless previously limited by enforceable permit conditions:

(a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source,

(b) an increase in the hours of operation, or

(c) use of an alternative fuel or raw material if prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

I. **"National Ambient Air Quality Standards** or **NAAQS"** means the primary (health based) and secondary (welfare-related) federal ambient air quality standards promulgated by the EPA pursuant to Section 109 of the CAA.

J. **"National Emission Standards for Hazardous Air Pollutants** or **NESHAP"** means the regulatory requirements, guidelines and emission limitations promulgated by the EPA pursuant to Section 112 of the CAA.

K. **"New Source Performance Standard** or **NSPS"** means the regulatory requirements, guidelines and emission limitations promulgated by the EPA pursuant to Section 111 of the CAA.

L. **"Nonattainment Area"** means for any air contaminant an area which is shown by monitoring data or which is calculated by air quality modeling (or other methods determined by the director of the Department or the administrator of the EPA to be reliable) to exceed either a state or NAAQS for such contaminant, including, but not limited to areas identified under Section 107 (d) (1) (A) through (C) of the CAA.

M. **"Operator"** means the specific local organization or subdivision of the firm or person, whether private, corporate, or public, that manages, on location, the operations of the stationary source.

N. **"Permit"** means a document issued by the Department, pursuant to the Air Quality Control Act 74-2-7, that authorizes a person, desiring to commence construction, to proceed subject to certain constraints, emissions limitations, and conditions.

O. **"Permittee"** means the person or duly authorized representative thereof to whom the authority-to-construct permit has been issued pursuant to the provisions of this Part.

P. **"Portable Stationary Source"** means a source, which can be relocated to another operating site with limited dismantling and reassembly, including for example, but not limited to, movable sand and gravel processing operations and asphalt plants.

Q. **"Pre-Controlled Emission Rate"** means the hypothetical emission rate that the source might have if operated at its maximum process capability and if there were no air pollution controls except those essential to production of product or to normal operation of the source. This phrase is frequently referred to as uncontrolled emission rate.

R. **"Regulated Air Contaminant"** means any airborne substance, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the CAA.

S. **"Significantly Impact"** means to pollute such that ambient contaminant concentrations including background, as indicated by modeling techniques authorized by the Department, exceed any of the significance levels listed in Table 1.

T. **"Startup"** means to put the stationary source, as constructed or modified under a permit pursuant to this Part, into operation complete with operable air pollution controls, whereby the process equipment or process performs for the purpose intended. Such operation may be cyclic in response to on-off controls. Repetition of cycles is not considered as startup for the purpose of this Part.

U. **"Shutdown"** means the cessation of operation of a stationary source wherein the air pollution controls are deactivated and the process is not activated to perform the purpose for which it was intended. Brief interruptions of operation that are normal for the kind of source that operates in cyclic rather than near steady state mode are not considered as shutdown for the purpose of this Part.

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V. **"Stationary Source or Source"** means a point of origin of air contaminant emissions which is configured as a permanently or temporarily immobile facility, building, or structure that houses, contains, or otherwise supports the installation of operating equipment or processes.
[3/24/82. . .7/21/87, 2/26/93, 12/16/94, 12/1/95; 20.11.41.7 NMAC - Rn, 20 NMAC 11.41.I.7, 10/1/02]

20.11.41.8 **VARIANCES:** [Reserved]
[12/1/95; 20.11.41.8 NMAC - Rn, 20 NMAC 11.41.I.8, 10/1/02]

20.11.41.9 **SAVINGS CLAUSE:** Any amendment to 20.11.41 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 20, or 20.11.41 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.
[12/16/94. . .12/1/95; 20.11.41.9 NMAC - Rn, 20 NMAC 11.41.I.9, 10/1/02]

20.11.41.10 **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 this Part.
[12/16/94. . .12/1/95; 20.11.41.10 NMAC - Rn, 20 NMAC 11.41.I.10, 10/1/02]

20.11.41.11 **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; 20.11.41.11 NMAC - Rn, 20 NMAC 11.41.I.11 & A, 10/1/02]

20.11.41.12 **FEES FOR PERMIT APPLICATION REVIEW:**

A. At the time any person submits an application for a permit it shall be accompanied by a check in the amount required by 20.11.2 NMAC, PERMIT FEES. No application shall be considered complete until such fee has been tendered.

B. Checks shall be made payable to the City of Albuquerque if the source is located within the municipal limits of Albuquerque. Otherwise the appropriate fees shall be made payable to the County of Bernalillo.
[7/21/87. . .12/1/95; 20.11.41.12 NMAC - Rn, 20 NMAC 11.41.I.12, & Repealed, 10/1/02; Rn, 20 NMAC 11.41.II.1, 10/1/02]

20.11.41.13 **CONTENTS OF APPLICATIONS:**

A. Any person seeking a permit under this Part shall do so by filing a written application with the Department.

B. **All applications shall:**

(1) be made on forms furnished by the Department,

(2) state the applicant's name and address, together with the name and address of the operator of the source if different than the owner,

(3) state the date of application,

(4) provide sufficient information to describe the quantities and nature of any regulated air contaminants that the source will emit inclusive of normal operation, operation at maximum production or processing capability rate of the source, as well as during malfunction, startup and shutdown as can be reasonably anticipated. Copies of all calculations, computations, modeling or analyses used in the derivations shall accompany such information,

(5) provide the information required by paragraph (4) above, that shall be sufficient to demonstrate, under pertinent analytical techniques and parameters as the Department may require, what effects such emissions from routine operations will have upon any New Mexico or federal ambient air quality standard, or an applicable NSPS or NESHAP limitation or any Board regulation.

(6) provide ambient impact analysis and information as to the steps the applicant will take in the event of malfunction, as well as addressing the nature of emissions during routine startup or shutdown of the source and its air pollution control equipment,

(7) be accompanied by:

(a) a map, such as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey or a map of equivalent or greater scale, detail and precision such as from the City of Albuquerque

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or County of Bernalillo Zone Atlas showing the exact location of the proposed construction, or modification or installation of the source,

(b) a process flow sheet, including a material balance of each subpart of the facility which would be involved in routine operations and from which contaminant emissions could occur,

(c) a full description, including all calculations and the basis for all control efficiencies presented, of the equipment to be used for air pollution control, including a process flow sheet, or, if the Department so requires, layout and assembly drawings, and

(d) a description of the equipment or methods proposed by the applicant to be used for emission measurement if required by the Department.

(8) state the maximum and normal operating time schedules of the source after completion of construction or modification,

(9) contain such other relevant information as the Department may reasonably require, and

(10) be signed by the owner or an authorized representative, certifying all information as represented in the application and attachments thereto, if any.

C. Protection of Confidential Information:

(1) The following items, when furnished to or obtained by the Board or the Department concerning sources, shall be protected by the Department as confidential if specifically marked by the applicant as confidential at the time such items are submitted, and shall not be made a part of any public record unless the applicant expressly agrees to its publication:

(a) records or information relating to processes or production techniques unique to the owner or operator, and

(b) data relating to the owner or operator's profits and costs which have not previously been released to the public.

(2) This section shall not be construed to prohibit the release of information concerning the nature and amount of emissions from any source.

(3) The Department shall review all claims of confidentiality made pursuant to this section and shall notify the applicant by certified mail of its decision in a timely manner with the reasons therefor. The burden of proof for claims of confidentiality shall be upon the applicant.

(4) The Department's determination on claims made pursuant to this section shall be the final administrative determination.

(5) The Department shall protect information claimed and subsequently found to be Confidential as prescribed in a Security Procedures Manual approved by the Board. Said manual shall be made available for public inspection and the Department's compliance therewith subject to audit at all times.

[3/24/82. . .7/21/87, 20.11.41.13 NMAC - Rn, 20 NMAC 11.41.II.2, 10/1/02]

20.11.41.14 PUBLIC NOTICE AND PARTICIPATION:

A. The Department shall execute the following public information and notice activities to:

(1) make available for public inspection a list of all pending applications for permits,

(2) prepare a summary of each application and make it available for public inspection as soon as the application is deemed complete by the Department,

(3) within fifteen (15) days after the Department deems an application complete, publish a public notice in a local newspaper of general circulation. The notice shall include the name and address of the applicant, location of the source, a brief description of the proposed construction or modification, a summary of the estimated emissions and shall identify the manner in which comments or evidence on the application may be submitted to the Department,

(4) allow all interested persons at least forty five but no more than sixty days from the date an application is deemed complete to submit written comments, evidence or to request a public hearing on the application,

(5) mail written notice of the action taken on the permit application to those persons who submitted written comments or evidence,

(6) within five (5) days after the Department deems the application complete, notify the appropriate State of New Mexico agency by certified mail, of the application and include the summary of the application,

(7) on any permit application for a source which will emit, or has the potential to emit greater than 100 tons of any regulated air contaminant including any fugitive emissions of said contaminant, the Department shall notify the state Environmental Improvement Division by certified mail at least sixty days prior to commencement. Such notice shall include a summary of the application.

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B. Public Hearings on Permits Involving Significant Public Interest: The Department shall hold a public hearing if the director determines that there is significant public interest. The time, date, and place of the hearing shall be determined by the Department. The Department shall give notice of the hearing to the applicant and the affected public. The director may appoint a hearing officer. A transcript of the hearing shall be made at the request of either the Department or the applicant and at the expense of the person requesting the transcript be made. At the hearing, all interested persons shall be given a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.
[3/24/82. . .7/21/87,6/5/91; 20.11.41.14 NMAC - Rn, 20 NMAC 11.41.II.3, 10/1/02]

20.11.41.15 PERMIT DECISIONS AND APPEALS:

A. The Department shall, within thirty (30) days after its receipt of an application for a permit, review such application for completeness. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete or if a different type of permit application is required, a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete or what type of application must be filed. If the application is judged complete but no permit is required any fees that accompanied the application shall be returned by certified mail. If a letter of explanation is desired by the applicant informing the applicant why no permit is necessary, the applicant shall make arrangements with the Department and tender the appropriate fee for such letter as required by 20.11.2 NMAC.

B. The Department shall establish an administrative record for each complete permit application consisting of the application, any other evidence submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the Department, a statement of matters officially noticed, and if a public hearing is held, the evidence submitted at the hearing.

C. The Department shall take formal action upon each application in a timely manner not to exceed one hundred twenty (120) days or one hundred eighty (180) days if a hearing has been called from the date the application was deemed complete yet shall not preclude the public comment provisions of Paragraph (4), of Subsection A. of 20.11.41.14 NMAC. Such formal action shall be to either grant the permit, grant the permit subject to conditions, or deny the permit. The Department's formal action shall be based upon information contained in the Department's administrative record.

D. Applicants for permits shall be notified of the Department's action by certified mail. If the permit is issued subject to conditions, or denied, the notification shall state the reasons therefor. Applicants desiring expedited receipt of the notification at the offices of the Department in lieu of certified mail may have it picked up by an authorized representative who shall acknowledge receipt of same in writing.

E. If the applicant is dissatisfied with the action taken by the Department a public hearing before the board may be requested by writing to the director within thirty (30) days after the notice of the Department's action has been received by the applicant. Unless a timely request for hearing is made, the decision of the Department shall be final.

F. If a timely request for public hearing is made; the Board shall hold such hearing within thirty (30) days of receipt of the request. The Department shall notify the applicant by certified mail of the date, time and place of the hearing. In the hearing, the burden of proof shall be upon the applicant. The Board may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the Board shall sustain, modify or reverse the action of the Department within thirty (30) days.
[3/24/82. . .7/21/87, 12/1/95, 20.11.41.15 NMAC - Rn, 20 NMAC 11.41.II.4, 10/1/02]

20.11.41.16 BASIS FOR PERMIT DENIAL:

A. The Department shall deny any request for a permit if:

(1) it appears that the construction or modification will not meet applicable regulations adopted pursuant to the Air Quality Control Act;,

(2) the source will emit any air contaminant in excess of a NSPS, a NESHAP or a regulation of the Board,

(3) the source will emit, in such quantity and duration as to cause imminent danger to public health, a hazardous air pollutant for which no NESHAP applies,

(4) it appears that either:

(a) the construction or modification will cause or contribute to air contaminant levels in excess of any NAAQS. However, the ambient air standards that are unique to the Board shall not form a basis for

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determining excessive air contaminant emissions relative to a proposed construction or modification of a stationary source,

(b) if the source will emit an air contaminant so as to significantly impact an area in which a state ambient air quality standard is not being met or so as to cause a state ambient air quality standard to be exceeded for that contaminant,

(c) denial of a permit as in Subparagraph (b), of Paragraph (4), of Subsection A, of 20.11.41.16 NMAC above, need not be made if the applicant provides an approved emissions trade pursuant to 20.11.44 NMAC as part of his application and such trade is sufficient to offset the proposed emissions otherwise causing significant impact upon an area which exceeds the New Mexico Ambient Air Quality Standard, or that would cause the Exceedence of a New Mexico Ambient Air Quality Standard for that contaminant,

(d) if it appears that issuance of a permit will not be consistent with achieving progress toward attainment of the state ambient air quality standard that is being exceeded, or

(5) any provision of the Air Quality Control Act will be violated; or

(6) it appears that the construction of the new or modified source will not be completed within a reasonable time.

[3/24/82. . .7/21/87, 12/1/95, 20.11.41.16 NMAC - Rn, 20 NMAC 11.41.II.5, 10/1/02]

20.11.41.17 ADDITIONAL LEGAL RESPONSIBILITIES ON APPLICANTS: The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, the CAA or any applicable regulations of the Board.

[3/24/82. . .7/21/87, 20.11.41.17 NMAC - Rn, 20 NMAC 11.41.II.6, 10/1/02]

20.11.41.18 PERMIT CONDITIONS:

A. The contents of the application submitted pursuant to Subsection B of 20.11.41.2 NMAC, or as the application may be amended prior to being deemed complete, shall form the basis for the terms and conditions contained in the permit.

B. The Department shall set specific conditions upon a permit, which may include any combination of the following provisions. If the permit is for a modification, the requirements of this section apply only to the facility or facilities involved in such modification.

(1) placement of individual emission limits, determined on a case-by-case basis, on the source for which the permit is issued. Such individual emission limits shall be as restrictive as the most stringent of the following:

(a) the extent necessary to meet the requirements of the Air Quality Control Act and the CAA, or

(b) the extent necessary to meet what may reasonably be anticipated from a federally proposed NSPS or under any federally required revision to the State Implementation Plan which has been proposed on or before the date of the application and is expected to be finally adopted,

(c) the emission rate finally specified in the permit application.

(2) a requirement that the permittee install and operate control technology on the source, determined on a case-by-case basis, sufficient to meet the requirements of the Air Quality Control Act and the CAA and regulations promulgated pursuant thereto;

(3) compliance with applicable federal NSPS and NESHAP regulations;

(4) imposition of reasonable restrictions and limitations other than those relating specifically to emission limits or emission rates;

(5) a schedule of construction;

(6) that the source be equipped for performance testing, continuous emissions monitoring, and measuring ambient air quality and weather conditions as follows:

(a) sampling ports of a size, number and location as the Department may require,

(b) safe access to each port,

(c) instrumentation to monitor and record emission data including continuous emission monitoring, if appropriate,

(d) instrumentation to detect or activate alarms for emissions of specified hazardous air pollutants in order to protect public health,

(e) any other reasonable sampling, testing or ambient monitoring and meteorological facilities and protocol.

(7) repetitive testing pursuant to 20.11.41.21 NMAC;

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(8) to establish and maintain such records of the nature and amount of emissions and to make such periodic reports to the Department regarding the nature and amounts of emissions and the performance of air pollution control equipment as are necessary to carry out the purpose of the Air Quality Control Act;

(9) other reasonable conditions as the Department may deem necessary.

C. Any term or condition imposed by the Department in a permit obtained pursuant to this Part shall apply to the same extent as a regulation of the Board.

[3/24/82. . .7/21/87, 12/1/95, 20.11.41.18 NMAC - Rn, 20 NMAC 11.41.II.7, 10/1/02]

20.11.41.19 PERMIT CANCELLATION: The Department may cancel any permit if the construction or modification has not commenced within one year from the date of issuance or if, during the construction or modification, work is suspended for a total of one year. Such cancellation shall be subject to the following procedures:

A. At least thirty (30) days prior to the cancellation of a permit the Department shall notify the permittee by certified mail of the impending cancellation. Subsequently, the Department shall notify the permittee by certified mail of the actual cancellation of the permit and the reasons therefor. Construction, modification and, if required, interim operation shall cease upon the effective date of cancellation contained in the notice of cancellation. A permittee who has received notice that a permit will or has been canceled may request a public hearing before the board. The request must be made in writing to the board either prior to or within thirty (30) days after notice of the actual cancellation by the Department has been received by the permittee. Unless a timely request for hearing is made, the decision of the Department shall be final.

B. If a timely request for public hearing is made; the Board shall hold such hearing within thirty (30) days after receipt of the request. The Department shall notify the permittee by certified mail of the date, time and place of the hearing. In the hearing the burden of proof shall be upon the permittee. The Board may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the Board shall sustain, modify or reverse the action of the Department.

[3/24/82. . .7/21/87, 20.11.41.19 NMAC - Rn, 20 NMAC 11.41.II.8, 10/1/02]

20.11.41.20 PERMITTEE'S NOTIFICATION OBLIGATIONS TO THE DEPARTMENT: The owner or operator of a stationary source subject to this Part shall notify the Department in writing or otherwise provide the Department with:

A. not less than thirty (30) days prior to initial startup of the source, the projected date,

B. not greater than fifteen (15) days after startup the date of actual initial startup of the source,

C. within fifteen (15) days after any change of operator,

D. every two years from the date of issuance of the permit, an updated emissions inventory for the source together with descriptions of any reconfigurations of process technology and air pollution control equipment. A letter indicating that no change has occurred, if such is the case, shall be sufficient to comply with this requirement.

[3/24/82. . .7/21/87, 20.11.41.20 NMAC - Rn, 20 NMAC 11.41.II.9, 10/1/02]

20.11.41.21 PERFORMANCE TESTING FOLLOWING STARTUP: Within sixty (60) days after achieving the maximum production rate in which the newly constructed or modified stationary source will be operated, but not later than one hundred eighty (180) days after initial startup of the newly constructed or modified source the owner or operator of the source may be required to conduct a performance test in accordance with methods and under operating conditions approved by the Department and to furnish the Department with a written report of the results of the test. The permittee shall allow a representative of the Department to be present at the test. The performance tests may have to be repeated until such time that compliance is demonstrated and testing is performed in a technically satisfactory manner.

[3/24/82. . .7/21/87, 20.11.41.21 NMAC - Rn, 20 NMAC 11.41.II.10, 10/1/02]

20.11.41.22 EMERGENCY PERMITS:

A. The Department may issue an emergency authority to construct permit when presented with a situation threatening the public health, safety or welfare, which requires the rapid construction or modification of, or installation of equipment in a facility subject to this Part if necessary to mitigate, prevent or remedy harm to the public.

B. Department personnel shall verify that the source, operating in accordance with the permit to be issued can and will meet all applicable standards, emission limitations and conditions before authorizing startup in

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order to ensure that the public emergency is not worsened by excess emissions or improper air pollution control equipment.

C. A situation caused by any negligent or unlawful action or operation of the facility by the facility owner or operator, including but not limited to, failure to seek a permit shall not constitute an emergency for the purposes of this section.

D. The requirements of Paragraphs (4) and (5), of Subsection A, of 20.11.41.14 NMAC; Subsection B. of 20.11.41.14 NMAC; Subsection A of 20.11.41.15 NMAC; and Subsection C. of 20.11.41.15 NMAC; shall not apply to emergency permits processed under this section.

[7/21/87. . .12/1/95, 20.11.41.22 NMAC - Rn, 20 NMAC 11.41.II.11, 10/1/02]

20.11.41.23 SYNTHETIC MINOR PERMITS:

A. The opportunity to obtain an Authority-to-Construct permit with a federally enforceable emission limitation will be made available to existing stationary sources that are considered to be major sources and would be subject to the provisions of 20.11.42 NMAC, Operating Permits. This opportunity shall be restricted to major sources whose construction preceded the requirement for an Authority-to-Construct permit.

B. Any major source that possesses an Authority-to-Construct permit but wishes to modify the permit so as to lower the emission limits such that it is no longer considered to be a major source may do so in accordance with the provisions contained in this section.

C. An existing major source wishing to limit its emissions through the Authority-to-Construct permitting process of 20.11.41 NMAC shall be subject to all requirements of this Part including but not limited to:

(a) 20.11.41.12 NMAC, Fees for Permit Application Review.
(b) 20.11.41.14 NMAC, Public Notice and Participation.
(c) 20.11.41.16 NMAC, Basis for Permit Denial.
(d) 20.11.41.17 NMAC, Additional Legal Responsibilities on Applicants.
(e) 20.11.41.21 NMAC, Performance Testing.

D. Exemptions from fees for modifications contained in 20.11.2. NMAC, Permit Fees, shall not be applicable to synthetic minor permits.

E. For the purposes of 20.11.41.23 NMAC, the terms "emission limitation", "federally enforceable", and "major source" shall be defined in accordance with their definitions found in section 20.11.42.7 NMAC.

[3/24/82. . .5/23/94, 12/1/95, 20.11.41.23 NMAC - Rn, 20 NMAC 11.41.II.12, 10/1/02]

20.11.41.24 NONATTAINMENT AREA REQUIREMENTS:

A. The emissions offset constraints of this section shall apply to those sources causing either of the following ambient effects:

(1) For State Non-Methane Hydrocarbons (NMHCs) Standard: Any new source or modification which will emit NMHCs such that the source's NMHC emissions would cause the NM Ambient Air Quality Standard of 0.19 ppm, 3-hour average, to be exceeded at any location; or

(2) For State Ambient Air Standards Other Than NMHCs: Any new source or modification which will emit a regulated air contaminant other than NMHCs such that the source's emissions would cause the significant ambient concentration of any contaminant listed in Table 1 to be exceeded at any location that does not meet the New Mexico Ambient Air Quality Standard for the contaminant; or

(3) For National Ambient Air Quality Standards: Any new source or modification, which is not a major stationary source or major modification as defined in 20.11.60 NMAC, which will emit a regulated air contaminant such that the source's emissions would cause the significant ambient concentration of any contaminant listed in Table 1 to be exceeded at any location which is designated as a Nonattainment Area as defined in 20.11.60 NMAC.

B. A source or modification subject to this section shall offset the ambient impact of its emissions by:

(1) In the case of exceeding the NM Ambient Air Standard for NMHCs, securing an approved emissions trade pursuant to 20.11.44 NMAC, Emissions Trading, and,

(2) if other than that of Paragraph (1), of Subsection B. of 20.11.41.24 NMAC, above, a source exceeding any of the significant ambient concentrations listed in Table 1 shall offset as follows:

(a) obtain emission offsets for the proposed emissions in an amount greater than one-to-one such that a net air quality benefit will occur; and

(b) ensure emission offsets are quantifiable, enforceable, and permanent by meeting the following sections of 20.11.60 NMAC:

(i) 20.11.41.16 NMAC, Emission Offset Baseline.

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(ii) 20.11.41.17 NMAC, Emission Offsets.
(iii) 20.11.41.19 NMAC, Air Quality Benefit.
[2/26/93. . .12/1/95, 20.11.41.24 NMAC - Rn, 20 NMAC 11.41.II.13, 10/1/02]

20.11.41.25 COMPLIANCE CERTIFICATION: Notwithstanding any State Implementation Plan approved by the Administrator, for the purpose of submission of compliance certifications an owner or operator is not prohibited from using monitoring as required under 20.11.42 NMAC and incorporated into an operating permit in addition to any specified compliance methods.
[12/16/94, 20.11.41.25 NMAC - Rn, 20 NMAC 11.41.II.14, 10/1/02]

20.11.41.26 ENFORCEMENT: Notwithstanding any other provision in the New Mexico State Implementation Plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

A. Presumptively Credible Evidence: Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

(1) A Monitoring method approved for the source pursuant to 20.11.42 NMAC and incorporated into an operating permit; or

(2) Compliance methods specified in the applicable plan.

B. Presumptively Credible Testing, Monitoring, or Information Gathering Methods: The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

(1) Any federally enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61, 63 and 75; and

(2) Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method in Subsections A or B, of 20.11.41.26 NMAC, above.

20.11.41.27 SIGNIFICANT AMBIENT CONCENTRATIONS:

Table 1.

	Averaging Time					
Pollutant	**Annual**	**24-hr**	**8-hr**	**3-hr**	**1-hr**	**1/2-hr**
TSP	1.0 $\mu g/m^3$	5.0 $\mu g/m^3$	--	--	--	--
PM_{10}	1.0 $\mu g/m^3$	5.0 $\mu g/m^3$	--	--	--	--
SO_2	1.0 $\mu g/m^3$	5.0 $\mu g/m^3$	--	25 $\mu g/m^3$	--	--
H2S	--	--	--	--	1.0 $\mu g/m^3$	5.0 $\mu g/m^3$
CO	--	--	0.5 $\mu g/m^3$	--	2.0 $\mu g/m^3$	--
NO2	1.0 $\mu g/m^3$	5.0 $\mu g/m^3$	--	--	--	--
NMHC	--	--	--	5.0 $\mu g/m^3$	--	--
Lead (Pb)	0.03 $\mu g/m^3$ quarterly					

[6/5/91. . .5/23/94, 12/16/94, 12/1/95; 20.11.41.26 NMAC - Rn, 20 NMAC 11.41.II.15, 10/1/02]

HISTORY OF 20.11.41 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, 7/9/73;
Regulation No. 1, Air Pollution Control Regulations, 3/21/77;
Regulation No. 20, Permits. 3/24/82;
Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 3/24/82;
Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 7/21/87;
Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 6/5/91;
Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 2/26/93;
Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 5/23/94,
Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 12/16/94.

History of Repealed Material: [Reserved]

Other History:
Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, filed 12/16/94 91 was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.41, Authority-To-Construct Permits, filed 10/27/95.
20 NMAC 11.41, Authority-To-Construct Permits, filed 10/27/95 was **renumbered, reformatted, amended and replaced** by 20.11.41 NMAC, Authority-To-Construct Permits, effective 10/1/02.

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