

DRAFT

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 11 ALBUQUERQUE -BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
3 **PART 41 STATIONARY SOURCE PERMITS**
4

5 **20.11.41.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box
6 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.
7 [20.11.41.1 NMAC - N, X/X/XX]

8
9 **20.11.41.2 SCOPE:** 20.11.41 NMAC applies to every person who intends to construct, operate, modify,
10 relocate or make a technical revision to a source subject to 20.11.41 NMAC, except as otherwise provided.
11 [20.11.41.2 NMAC - N, X/X/XX]

12 **A. Applicability:** Every stationary source subject to 20.11.41 NMAC shall obtain an air quality
13 stationary source permit, permit modification, relocation approval or technical revision approval from the
14 department as required by 20.11.41 NMAC before commencing construction of a new stationary source or
15 commencing a modification, relocation, or technical revision if the proposed construction, modification, relocation
16 or technical revision will emit a regulated air contaminant that is subject to any of the emission thresholds, source
17 types, classifications or other requirements of Subsection A of 20.11.41.2 NMAC, except as otherwise provided in
18 20.11.41 NMAC.

19 **(1) Emission thresholds that require a stationary source permit for construction or**
20 **modification:**

21 **(a)** If a person proposes to construct a new stationary source that will emit one or more
22 regulated air contaminants for which a federal, state or board ambient air quality standard exists and if the source
23 will emit, when calculated at the contaminant's potential emission rate, 10 pounds per hour or more or 25 tons per
24 year or more of any single regulated air contaminant, then the person shall apply for a permit as required by
25 20.11.41 NMAC. For purposes of Paragraph (1) of Subsection A of 20.11.41.2 NMAC, when rounding, if the
26 number after the decimal point is less than 5, the whole number remains unchanged. If the number after the decimal
27 point is 5 or greater, the whole number shall be rounded up to next whole number.

28 **(b)** If a person proposes a modification of a stationary source and the modification will emit
29 one or more regulated air contaminants for which a federal, state or board ambient air quality standard exists, and if,
30 as a result of the modification, all activities at the source will emit, when calculated at the contaminant's potential
31 emission rate, 10 pounds per hour or more or 25 tons per year or more of a regulated air contaminant, then the
32 person shall apply for a permit modification as required by 20.11.41 NMAC.

33 **(c)** If a person proposes to construct a new stationary source or proposes a modification of a
34 stationary source, and if the source will emit, when calculated at the contaminant's potential emission rate, 2 tons
35 per year or more of a single hazardous air pollutant (HAP) as defined by Section 112(b) of the federal Clean Air
36 Act, or 5 tons or more per year of any combination of HAP, then the proposed or existing source shall apply for a
37 permit or permit modification as required by 20.11.41 NMAC.

38 **(d)** If a stationary source was not required to obtain a permit pursuant to 20.11.41 NMAC
39 because the source was operating before August 31, 1972, and if operations of the source have ceased for five or
40 more consecutive years, and if a contaminant emitted by the source has a potential emission rate of 10 pounds per
41 hour or more or 25 tons per year or more of any regulated air contaminant, then the owner or operator of the source
42 shall apply for and obtain a permit as required by 20.11.41 NMAC before the source begins operation.

43 **(e)** If a major stationary source or major modification as defined in 20.11.60 NMAC, *Permitting*
44 *in Nonattainment Areas*, also meets the applicability requirements of 20.11.41 NMAC, then the major stationary
45 source or modification shall apply for a permit pursuant to both 20.11.41 NMAC and 20.11.60 NMAC if either of
46 the following conditions applies:

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

50 **(ii)** the source is or will be located in an area that is in attainment of the NAAQS for the
51 air contaminant or air contaminants that the source will emit, but, before emissions offsets or trades are considered,
52 the ambient impact of the emissions from the source will exceed the significance levels in the table incorporated in
53 20.11.60.22 NMAC at any location within the impacted areas that is in nonattainment for the air contaminant or air
54 contaminants emitted by the source.

55 **(f)** If a person proposes to construct a new stationary source or proposes a modification of a
56 stationary source, and if the source will emit, when calculated at the contaminant's potential emission rate, 5 tons

DRAFT

1 per year or more of lead (Pb) or any combination of lead and its compounds per year when measured by a reference
2 method based on 40 CFR 50, Appendix G, then the person shall apply for a permit or permit modification as
3 required by 20.11.41 NMAC.

4 (g) If a stationary source began construction after August 31, 1972 and the source is subject to
5 a board regulation that includes an equipment emission limitation, the source shall apply for a permit or permit
6 modification as required by 20.11.41 NMAC.

7 (2) **Source classifications; source types:** If a person proposes to construct a new stationary source,
8 ~~or modify an existing stationary source, construct a portable or temporary stationary source, propose a portable~~
9 ~~stationary source relocation, or proposes a technical revision~~ and any of the following conditions apply, the person
10 shall apply for and obtain a permit or a permit modification pursuant to 20.11.41 NMAC before commencing
11 construction or modification:

12 (a) if a person proposes to install any equipment or process that is subject to 20.11.63 NMAC,
13 *New Source Performance Standards for Stationary Sources*, or 20.11.64 NMAC, *Emission Standards for Hazardous*
14 *Air Pollutants for Stationary Sources*;

15 (b) if a source meets the applicability requirements of 20.11.41 NMAC but also is a major
16 stationary source or a major modification as defined in 20.11.61 NMAC, *Prevention of Significant Deterioration*, in
17 which case the owner or operator shall apply for a permit pursuant to both 20.11.41 NMAC and 20.11.61 NMAC.

18 (c) if a source is a major source of HAP as defined in 40 CFR 63;

19 ~~(d) if the source is a portable or temporary stationary source;~~

20 ~~(e) if a source relocation is proposed; or~~

21 ~~(f) if a technical revision to a permit is proposed.~~

22 (3) **Sources that become subject to new NSPS or NESHAP.** If a person is operating a source that
23 becomes subject to a new NSPS or NESHAP, the person shall apply for a permit as required by 20.11.41 NMAC.

24 (4) **Additional Permit Requirements:**

25 (a) If a source includes more than one unit, the department may require a separate permit or
26 permit conditions for each unit that is not substantially interrelated with another unit. A common connection leading
27 to ductwork, pollution control equipment or a single stack, shall not, by itself, constitute a substantial
28 interrelationship.

29 (b) Although more than one air quality permitting regulation adopted by the board may apply
30 to a stationary source, including 20.11.40, 60, 61, 63, and 64 NMAC, nothing in 20.11.41 NMAC shall be construed
31 to require more than one permit application for each unit proposed for construction or modification. Definitions and
32 provisions included in specific federal program regulations shall apply to permit review of any regulated air
33 contaminant and source regulated by the federal NSPS, NESHAP, prevention of significant deterioration, visibility
34 or nonattainment requirements.

35 (c) For all sources subject to 20.11.41 NMAC, applications for permits shall be filed before
36 commencement of construction, modification, relocation or technical revision. Regardless of the anticipated
37 commencement date, no construction, modification, relocation or revision shall begin before the owner or operator
38 has received a permit or written approval from the department.

39 **B. Exemptions:**

40 (1) 20.11.41 NMAC does not apply to sources within Bernalillo county that are located on Indian
41 lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

42 (2) The following sources and activities shall not be reported in the permit application. Emissions
43 from such activities shall not be included in the calculation of the facility-wide potential emission rate under
44 Subparagraphs (a), (b), or (c) of Paragraph (1) of Subsection A of 20.11.41.2 NMAC. Such activities may be
45 commenced or changed without a permit or permit modification under 20.11.41 NMAC:

46 (a) Activities which occur strictly for maintenance of grounds or buildings, including: lawn
47 care, pest control, grinding, cutting, welding, painting, woodworking, sweeping general repairs, janitorial activities,
48 and building roofing operations;

49 (b) Activities for maintenance of equipment or pollution control equipment, either inside or
50 outside of a building, including cutting, welding, and grinding, but excluding painting;

51 (c) Exhaust emissions from forklifts, courier vehicles, front end loaders, graders, carts,
52 maintenance trucks, and fugitive emissions from fleet vehicle refueling operations, provided such emissions are not
53 subject to any requirements under the New Mexico Air Quality Control Act, NMSA 1978, NSPS, or NESHAP;

54 (d) Use of fire fighting equipment and fire fighting training provided such emissions are not
55 subject to any requirements under NSPS or NESHAP;

DRAFT

1 (e) Government military activities such as field exercise, explosions, weapons testing and
2 demolition to the extent that such activities:

3 (i) do not result in visible emissions entering publicly accessible areas; and

4 (ii) are not subject to a NSPS or NESHAP;

5 (f) Use of portable aerospace ground equipment (such as power generators, compressors,
6 heaters, air conditions, lighting units) in direct support of aircraft operations and on or the immediate vicinity of an
7 airfield provided such emissions are not subject to any requirements under NSPS or NESHAP.

8 ~~(2)~~**(3)** An applicant for a permit is not required to obtain a permit for the following new or
9 modified sources and activities at a facility, but is required to report the following on the permit application forms
10 supplied by the department:

11 **(a)** fuel burning equipment that is used solely for heating buildings for personal comfort or for
12 producing hot water for personal use and that:

13 **(i)** uses gaseous fuel and has a ~~total~~ design rate ~~for all units~~ of five million BTU per hour
14 or less; or

15 **(ii)** uses distillate oil, but not including waste oil, and has a ~~total~~ design rate ~~for all units~~
16 of one million BTU per hour or less;

17 **(b)** After a permit has been issued, construction of the sources or commencement of the sources
18 and activities described in Paragraph ~~(2)~~ **(3)** of Subsection B of 20.11.41.2 NMAC shall comply with the
19 administrative permit revision procedures in Subsection A of 20.11.41.28 NMAC. Emissions from the sources and
20 activities described in Paragraph ~~(2)~~ **(3)** of Subsection B of 20.11.41.2 NMAC shall not be included in the facility-
21 wide potential emission rate calculation that is described in Subparagraphs (a) and (b) of Paragraph (1) of
22 Subsection A of 20.11.41.2 NMAC, unless the sources or emissions are subject to any NSPS or NESHAP
23 requirement of 20.11.41 NMAC.

24
25 **20.11.41.3 STATUTORY AUTHORITY:** 20.11.41 NMAC is adopted pursuant to the authority provided in
26 the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control
27 Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 & 4; and the Joint Air Quality Control Board
28 Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.
29 [20.11.41.3 NMAC - N, X/X/XX]

30
31 **20.11.41.4 DURATION:** Permanent.
32 [20.11.41.4 NMAC - N, X/X/XX]

33
34 **20.11.41.5 EFFECTIVE DATE:** XX, XX, XXXX, unless a later date is cited at the end of a section.
35 [20.11.41.5 NMAC - N, X/X/XX]

36
37 **20.11.41.6 OBJECTIVE:** To establish the requirements for obtaining a stationary source permit, permit
38 modification, relocation and administrative and technical permit revisions.
39 [20.11.41.6 NMAC - N, X/X/XX]

40
41 **20.11.41.7 DEFINITIONS:** In addition to the definitions in 20.11.41 NMAC, the definitions in 20.11.1
42 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.41 NMAC shall
43 govern.

44 **A. “Act” or “state act”** means the New Mexico Air Quality Control Act, Chapter 74, Article 2
45 NMSA 1978.

46 **B. “Administrative permit revision” or “administrative revision”** means a revision to a stationary
47 source permit for a source that is requested and approved pursuant to Subsection A of 20.11.41.28 NMAC.

48 **C. “Air contaminant” or “contaminant”** means a substance, including particulate matter, fly ash,
49 dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay
50 or reaction product thereof.

51 **D. “Air pollutant” or “pollutant”** means the emission, except emission that occurs in nature, into
52 the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable
53 probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare,
54 visibility or the reasonable use of property.

DRAFT

1 **E. “Air pollution control equipment”** means any device, equipment, process or combination
2 thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or
3 convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

4 **F. “Ambient air”** means the outdoor atmosphere, but does not include the area entirely within the
5 geographical boundaries of the source from which the air contaminants are, or may be, emitted and where public
6 access is restricted within the boundaries.

7 **G. “Applicable requirement”** means any of the following, and includes requirements that have been
8 promulgated or approved by the board or EPA through rulemaking:

9 (1) any standard or other requirement provided in the New Mexico state implementation plan
10 approved by EPA, or promulgated by EPA through rulemaking, under Title I of the federal act, including Parts C or
11 D;

12 (2) any term or condition of a stationary source permit issued pursuant to regulations approved or
13 promulgated through rulemaking under Title I of the federal act, including Parts C or D;

14 (3) any standard or other requirement:

15 (a) under Section 111 or 112 of the federal act;

16 (b) of the acid rain program under Title IV of the federal act or the regulations promulgated
17 there under;

18 (c) governing solid waste incineration under Section 129 of the federal act;

19 (d) for consumer and commercial products under Section 183(e) of the federal act; or

20 (e) of the regulations promulgated to protect stratospheric ozone under Title VI of the federal
21 act, unless the EPA administrator has determined that the requirements need not be contained in a Title V permit;

22 (4) any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act;

23 (5) any national or state ambient air quality standard;

24 (6) any increment or visibility requirement under Part C of Title I of the federal act applicable to
25 temporary sources permitted pursuant to Section 504(e) of the federal act; and

26 (7) any regulation adopted by the board in accordance with the Joint Air Quality Control Board
27 Ordinances pursuant to the Air Quality Control Act, and the laws and regulations in effect pursuant to the Air
28 Quality Control Act.

29 **H. “Board”** means the Albuquerque-Bernalillo county air quality control board or its successor board
30 pursuant to the act.

31 **I. “Commence”, “commencement” or “commencing”** means an owner or operator has undertaken
32 a continuous program of construction or modification or that an owner or operator has entered into a binding
33 contractual obligation to undertake and complete a continuous program of construction within a reasonable time.

34 **J. “Construction”** means fabrication, erection, installation or relocation of a stationary source,
35 including but not limited to temporary installations and portable stationary sources.

36 **K. “Days”** means consecutive days except as otherwise specifically provided.

37 **L. “Department”** means the Albuquerque environmental health department, which is the
38 administrative agency of the Albuquerque-Bernalillo county air quality control board.

39 **M. “Emergency”** means unforeseen circumstances resulting in an imminent and substantial
40 endangerment to health, safety, or welfare and that require immediate action.

41 **N. “Emission limitation”** means a requirement established by EPA, the state implementation plan
42 (SIP), the Air Quality Control Act, local ordinance, permit, or board part or regulation, that limits the quantity, rate
43 or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including
44 any requirements relating to the operation or maintenance of a source to assure continuous reduction.

45 **O. “Emission unit” or “unit”** means any article, machine, equipment, contrivance, process, or
46 process line which emits or reduces, or may emit or reduce, the emissions of any air contaminant, except from motor
47 vehicles.

48 **P. “EPA”** means the United States environmental protection agency.

49 **Q. “Federal clean air act”, “CAA” or “federal act”** means the federal Clean Air Act, 42 U.S.C.
50 Section 7401 through 7671 et seq., as amended

51 **R. “Federally enforceable”** means all limitations and conditions that are enforceable by the
52 administrator of the EPA, including all requirements developed pursuant to 40 CFR Parts 60 and 61, requirements
53 included in any applicable state implementation plan, and any permit requirements established pursuant to 40 CFR
54 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR
55 51.166Q.

DRAFT

1 **S. "Malfunction"** means any sudden, infrequent, and not reasonably preventable failure of air
2 pollution control equipment, process equipment, or the failure of a process to operate in a normal or expected
3 manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

4 **T. "Modification" or "to modify"** means a physical change in, or change in the method of operation
5 of a source that results in an increase in the potential emission rate of any regulated air contaminant emitted by the
6 source or that results in the emission of any regulated air contaminant not previously emitted; a relocation of a
7 stationary source, unless previously established as a portable stationary source subject to specific permit conditions;
8 or a revision that involves substantive changes that exceed the scope of a revision as defined by 20.11.41.28 NMAC,
9 but does not include:

- 10 (1) a change in ownership of the source;
- 11 (2) routine maintenance, repair or replacement;
- 12 (3) installation of air pollution control equipment, and all related process equipment and materials
13 necessary for its operation, undertaken for the purpose of complying with regulations adopted by the state or local
14 board or pursuant to the CAA; or
- 15 (4) unless previously limited by enforceable permit conditions:
- 16 (a) an increase in the production rate, if the increase does not exceed the operating design
17 capacity of the source;
- 18 (b) an increase in the hours of operation; or
- 19 (c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable
20 of accommodating the fuel or raw material or if use of an alternate fuel or raw material is caused by any natural gas
21 curtailment or emergency allocation or any other lack of supply of natural gas.

22 **U. "National ambient air quality standards" or "NAAQS"** means the primary (health based) and
23 secondary (welfare-related) federal ambient air quality standards promulgated by the EPA pursuant to Section 109
24 of the CAA.

25 **V. "National emission standards for hazardous air pollutants" or "NESHAP"** means the
26 regulatory requirements, guidelines and emission limitations promulgated by the EPA pursuant to Section 112 of the
27 CAA.

28 **W. "New Mexico ambient air quality standards" or NMAAQs"** means the ambient air quality
29 standards promulgated by the New Mexico environmental improvement board.

30 **X. "New source performance standard" or "NSPS"** means the regulatory requirements, guidelines
31 and emission limitations promulgated by the EPA pursuant to Section 111 of the CAA.

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

36 **Z. "North American industry classification system" or "NAICS"** means the industry classification
37 system used by the statistical agencies of the United States issued by the federal office of management and budget
38 and replaces the standard industrial classification (SIC) system.

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

41 **BB. "Owner"** means the person or persons who own a facility or part of a facility.

42 **CC. "Part"** means an air quality control regulation organized under Title 20, Chapter 11 of the New
43 Mexico Administrative Code that has been adopted or amended by the board, unless otherwise noted.

44 **DD. "Permit"** means a stationary source permit for source construction, a permit modification,
45 relocation, or administrative or technical permit revision that has been issued or approved by the department
46 pursuant to 20.1.41 NMAC. A permit includes constraints, emissions limitations and other conditions and
47 authorizes a person to commence construction, or to modify, relocate or make a technical revision to the permitted
48 source, facility or operation.

49 **EE. "Permittee"** means the person who has applied for and has obtained a stationary source permit for
50 a source that has been issued pursuant to 20.11.41 NMAC.

51 **FF. "Portable stationary source"** means a source that can be relocated to another operating site with
52 limited dismantling and reassembly, including, as an example, movable sand and gravel processing operations,
53 concrete and asphalt plants.

54 **GG. "Potential emission rate"** means the emission rate of a source at its maximum capacity to emit a
55 regulated air contaminant under its physical and operational design, provided any physical or operational limitation
56 on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and

DRAFT

1 restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be
2 treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is
3 enforceable by the department or the board pursuant to the Air Quality Control Act or the federal Act.

4 **HH. "Process equipment" or "process equipment unit"** means any equipment, apparatus, or device
5 embracing chemical, industrial, or manufacturing facilities such as ovens, mixing kettles, heating and reheating
6 furnaces, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms
7 of manufacturing or processing that may emit any air contaminant.

8 **II. "Public information hearing" or "PIH"** means the hearing provided by the permit applicant
9 pursuant to 20.11.41.15 NMAC.

10 **JJ. "Regulated air contaminant"** means any air contaminant, the emission or ambient concentration
11 of which is regulated pursuant to the New Mexico air quality control act or the federal act

12 **KK. "Relocation"** means to physically move a portable stationary source.

13 **LL. "Shutdown"** means the cessation of operation of a stationary source, which involves deactivating
14 the air pollution controls and not activating the source to perform the purpose for which it was intended. Brief
15 interruptions of operation that are normal for the type of source that operates in cyclic rather than near-steady-state
16 mode are not considered a shutdown source for the purpose of 20.11.41 NMAC.

17 **MM. "Significantly impact"** means to pollute to an extent that ambient contaminant concentrations,
18 including background, exceed any of the significance levels listed in Table 1 of 20.11.41.33 NMAC, as indicated by
19 modeling techniques authorized by the department.

20 **NN. "Standard industrial classification" or "SIC"** means the code from the system used to classify
21 all industries in the United States economy which was administered by the federal statistical policy division of the
22 office of management and budget and in 1997 was replaced by the North American industry classification system
23 (NAICS).

24 **OO. "Startup"** means to put a stationary source that has been constructed or modified as authorized by
25 a permit pursuant to 20.11.41 NMAC into operation complete with operable air pollution controls, so the process
26 equipment or the process performs for the purpose intended. The operation may be cyclic in response to on-off
27 controls. Repetition of cycles is not startup for purposes of 20.11.41 NMAC.

28 **PP. "Stationary source" or "source"** means any building, structure, equipment, facility, or
29 installation which is either permanent or temporary, excluding a private residence, that emits or may emit any
30 regulated air contaminant or any pollutant listed under Section 112(b) of the federal act, the Air Quality Control Act,
31 or the laws and regulations in effect pursuant to the act. Several buildings, structures, facilities, or installations, or
32 any combinations will be treated as a single stationary source if they belong to the same industrial grouping, are
33 located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons,
34 or are under common control. Pollutant-emitting activities shall be treated as the same industrial grouping if they
35 have the same first two digits of an applicable North American industry classification system (NAICS) code.

36 **QQ. "Technical permit revision" or "technical revision"** means a revision to a stationary source
37 permit pursuant to Subsection B of 20.11.41.28 NMAC.
38 [20.11.41.7 NMAC - N, X/X/XX]
39

40 **20.11.41.8 VARIANCES:** A person may request a variance from 20.11.41 NMAC in accordance with the
41 procedures established in 20.11.7 NMAC, *Variance Procedure*.
42 [20.11.41.8 NMAC - N, X/X/XX]
43

44 **20.11.41.9 SAVINGS CLAUSE:** Any amendment to 20.11.41 NMAC that is filed with the state records
45 center and archives shall not affect actions pending for violation of the air quality control act, a city or county
46 ordinance, a prior version of 20.11.41 NMAC, another board regulation or a permit issued by the department.
47 Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute,
48 ordinance, part or regulation section in effect at the time the violation was committed.
49 [20.11.41.9 NMAC - N, X/X/XX]
50

51 **20.11.41.10 SEVERABILITY:** If for any reason any section, paragraph, sentence, clause, wording or
52 application of 20.11.41 NMAC or any federal or New Mexico standards incorporated herein is held unconstitutional
53 or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect
54 the validity or application of remaining provisions of 20.11.41 NMAC.
55 [20.11.41.10 NMAC - N, X/X/XX]
56

DRAFT

1 **20.11.41.11 DOCUMENTS:** Documents incorporated and cited in 20.11.41 NMAC may be viewed at the
2 Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM 87102. The permit
3 application, supporting documentation, any preliminary determination made by the department, and the draft permit,
4 if completed, shall be available for public inspection at the department's air quality division office at 11850 Sunset
5 Gardens SW, Albuquerque, New Mexico 87121.
6 [20.11.41.11 NMAC - N, X/X/XX]
7

8 **20.11.41.12 FEES FOR PERMIT APPLICATION REVIEW:**

9 **A.** An application for a permit shall be accompanied by a check or money order in the amount
10 required by 20.11.2 NMAC, *Fees*. No application shall be complete until the entire fee has been tendered. Checks
11 shall be made payable to the city of Albuquerque as required by 20.11.2 NMAC, *Fees*.
12 [20.11.41.12 NMAC - N, X/X/XX]
13

14 **20.11.41.13 APPLICATION FOR PERMIT:**

15 **A. Pre-application requirements:** A person who is seeking a permit pursuant to 20.11.41 NMAC
16 shall contact the department in writing and request a pre-application meeting or information regarding the contents
17 of the application and the application process. The meeting shall include discussion of approved emission factors
18 and control efficiencies, air dispersion modeling guidelines, department policies, air quality permit fees, public
19 notice requirements and regulatory timelines. The department may waive the pre-application meeting requirement.

20 **B.** A person who is seeking a permit pursuant to 20.11.41 NMAC shall complete a permit application
21 and file one complete original and one duplicate copy with the department

22 **C. Application contents:** The following are the minimum elements that shall be included in the
23 permit application before the department can determine whether the application is administratively complete and
24 ready for technical review. It is not necessary to include an element if the department has issued a written waiver
25 regarding the element and the waiver accompanies the application. The permit application shall:

- 26 (1) be filled in completely on a form provided by the department;
27 (2) include name and address of the applicant and the names and address of the owner and all
28 operators of the source if different than the applicant;
29 (3) include the date the application was submitted to the department;
30 (4) include sufficient attachments, including calculations, computations, EPA-approved air
31 dispersion model or models executed under a protocol that has been approved in advance and in writing by the
32 department, and all other analyses used by the applicant to providing information to describe the potential emission
33 rate and nature of all regulated air contaminants that the source may emit, and the actual emissions that the source
34 will emit under routine operations after construction, modification, relocation or technical revision, along with
35 estimates of potential emissions during malfunction, startup and shutdown;

36 (5) include an operational and maintenance strategy detailing:
37 (a) the steps the applicant will take if a malfunction occurs that may cause emission of a
38 regulated air contaminant to exceed a limit that is included in the permit;
39 (b) the nature of emissions during routine startup or shutdown of the source and the source's
40 air pollution control equipment; and

41 (c) the steps the applicant will take to minimize emissions during routine startup or
42 shutdown;

43 (6) include a map, such as a 7.5 minute Topographic Quadrangle map published by the United
44 States Geological Survey or a map of equivalent or greater scale, detail and precision, including a City of
45 Albuquerque or County of Bernalillo Zone Atlas map that shows the proposed location of each process equipment
46 unit involved in the proposed construction, modification, relocation or technical revision of the source;

47 (7) include an aerial photograph showing the proposed location of each process equipment unit
48 involved in the proposed construction, modification, relocation or technical revision of the source;

49 (8) include a complete description of all sources of regulated air contaminants and a process flow
50 diagram depicting the process equipment unit or units at the facility, both existing and proposed, that are proposed to
51 be involved in routine operations and from which regulated air contaminant emissions are expected to be emitted;

52 (9) include a full description of air pollution control equipment, including all calculations and the
53 basis for all control efficiencies presented, manufacturer's specifications sheets, and site layout and assembly
54 drawings. UTM (Universal Transverse Mercator) coordinates shall be used to identify the location of each emission
55 unit;

DRAFT

1 (10) include a description of the equipment or methods proposed by the applicant to be used for
2 emission measurement, if required by the department;

3 (11) include the maximum and normal operating time schedules of the source after completion of
4 construction, modification, relocation or technical revision;

5 (12) include other relevant information as the department may reasonably require;

6 (13) include the signature of the applicant, operator, owner or an authorized representative,
7 certifying to the accuracy of all information as represented in the application and attachments, if any;

8 (14) be accompanied by a check or money order for the appropriate application fee or fees
9 required by 20.11.2 NMAC, *Fees*. The fees are established to offset some or all of the reasonable cost of the
10 department reviewing and acting upon an application for a permit and implementing and enforcing the terms and
11 conditions of the permit, excluding costs associated with an enforcement action; and

12 (15) include documentary proof that applicant has complied with all public notice requirements,
13 as required by Subsections D and E of 20.11.41.13 NMAC. Documentary proof shall include the proof of
14 publication of the public notice required by Paragraph 3 of Subsection D of 20.11.41.13 NMAC and a photograph of
15 each notice posted as required by Paragraph 4 of Subsection D of 20.11.41.13 NMAC.

16 **D. Applicant's public notice requirements:** The applicant shall comply with the following public notice
17 requirements of Paragraphs (1)-(4) of Subsection D of 20.11.41.13 NMAC if the applicant is applying for a permit
18 or permit modification, and shall comply with the notice requirements if required by the department regarding a
19 portable stationary source relocation. The applicant shall:

20 (1) provide public notice by certified mail to the owners of record, as shown in the most recent
21 property tax schedule, of all properties within 200 feet of the boundaries of the property on which the facility is
22 located or proposed to be located or within one-quarter of a mile of the source;

23 (2) provide public notice by certified mail to the Bernalillo county manager; to the mayor of all
24 municipal corporations and counties within a two-mile radius of the center of the property upon which the facility is
25 or is proposed to be located; to the city of Albuquerque councilors and Bernalillo county commissioners of the
26 districts within which the facility is or is proposed to be located; and to all Indian pueblos, Indian reservations and
27 counties within a two-mile radius of the center of the property on which the facility is or is proposed to be located;

28 (3) publish public notice once in the newspaper of the largest general circulation in Bernalillo county.
29 The notice shall be located in either the classified or the legal advertisements section of the newspaper and at one
30 additional location in the newspaper that is calculated to provide effective notice to the general public. The notice in
31 the additional location shall be at least 96.8 square centimeters (15 square inches), with the shortest dimension at
32 least 7.6 centimeters (three inches). The department may require the notice to be published in a language in addition
33 to English.

34 (4) until the department makes a final decision regarding the application, post and maintain the public
35 notice at a minimum of four publicly-accessible and conspicuous locations, including:

36 (a) a weather-proof sign meeting the minimum size as determined by the department posted at
37 the more visible of either the proposed or existing facility entrance or another location on the property boundary;
38 and

39 (b) three additional locations commonly frequented by the general public in the vicinity of the
40 proposed or existing facility, such as city hall, a nearby post office, public library, community center, senior center
41 or institution of learning.

42 **E. Additional public notice requirements:** The public notice specified in Paragraphs (1) through
43 (4) of Subsection D of 20.11.41.13 NMAC shall include the following:

44 (1) the applicant's name and address, and the names and addresses of owner or operator of the facility
45 or proposed facility;

46 (2) the actual or estimated date the application will be submitted to the department;

47 (3) the exact location of the facility or proposed facility;

48 (4) a description of the facility, the nature of business, the process or change for which the permit is
49 being requested, including an estimate of the maximum quantities of each regulated air contaminant the source will
50 emit if the permit is issued and the proposed construction or modification is completed;

51 (5) the maximum and standard normal operating schedules proposed for the facility; and

52 (6) the current address of the applicant to which comments and inquiries may be directed.

53 **F. Changing, Supplementing or Correcting Applications:**

54 (1) Before the department makes a final decision regarding the application, the applicant shall have a
55 duty to promptly supplement and correct information the applicant has submitted in the application to the
56 department. Applicant's duty to supplement and correct the application includes relevant information acquired after

DRAFT

1 the applicant has submitted the application and additional information the applicant otherwise determines is relevant
2 to the application and the department's review and decision.

3 (2) While the department is processing an application, regardless of whether the department has
4 determined the application is administratively complete, if the department determines additional information is
5 necessary to evaluate or make a final decision regarding the application, the department may request, and the
6 applicant shall provide the requested additional information. The request shall be in writing, identify the additional
7 information requested, the reason the additional information is needed, and set a reasonable deadline for a response.
8 The applicant shall submit the requested information in writing to the department on or before the response deadline.

9 G. Protection of Confidential Information:

10 (1) All records, reports or information relating to permit applications obtained by the department or
11 the board from any person shall be available to the public for inspection and copying, except if a person has made a
12 satisfactory showing to the department or the board that specific items or information or parts thereof, if made
13 public, would divulge confidential business records or methods or processes entitled to protection as trade secrets. If
14 the items or information are specifically marked by the person as confidential at the time of submittal, the
15 department or the board shall then protect the following as confidential and not to be made a part of any public
16 record unless the person expressly agrees, in writing, to its inspection, copying, or publication:

17 (a) records, reports or information relating to methods, processes or production techniques unique
18 to the person, and

19 (b) data relating to the person's profits and costs or other confidential business information which
20 have not previously been released to the public.

21 (2) Subsection G of 20.11.41.13 NMAC shall not be construed to prohibit the release of information
22 concerning the nature and amount of emissions from any source.

23 (3) The department shall review all claims of confidentiality made by any person pursuant to
24 20.11.41 NMAC and shall notify the person by certified mail in a timely manner with the reasons for its decision.
25 The burden of proof for claims of confidentiality shall be upon the person submitting such claim.

26 (4) The department's determination regarding claims made pursuant to Subsection G of 20.11.41.13
27 NMAC shall be the final administrative determination.

28 (5) The department shall protect information claimed and subsequently found to be confidential in
29 accordance with the provisions of 74-2-1 NMSA 1978 and 18 U. S. C. Section 1905, except that any such record,
30 report or information may be disclosed:

31 (a) to other officers, employees or authorized representatives of the department, the board and
32 the EPA; or

33 (b) in any proceeding pursuant to the federal act or the state act, when relevant.
34 [20.11.41.13 NMAC - N, X/X/XX]

35 20.11.41.14 PUBLIC NOTICE BY DEPARTMENT -- PUBLIC PARTICIPATION:

36 A. The department shall make a list of all pending applications for permits available for public inspection.

37 B. The department shall make the permit application and all supporting documentation available for
38 public inspection. The application, supporting documentation, any preliminary determination made by the
39 department, and the draft permit, if completed, shall be available for public inspection at the department's air quality
40 division office at 11850 Sunset Gardens SW, Albuquerque, New Mexico 87121.

41 C. If the department makes an affirmative administrative completeness determination:

42 (1) the department shall publish the public notice in the newspaper with the largest general circulation
43 in Bernalillo county. The notice shall include:

44 (a) the applicant's name and address, the proposed or existing location, a brief description of the
45 source, a summary of proposed emissions and ambient air quality impact as determined by air dispersion modeling,
46 and that the department will issue the permit if the department determines the construction or modification requested
47 in the application complies with all requirements of 20.11.41 NMAC, including ambient air quality standards.

48 (b) where the permit application, the department's analysis, and a draft permit, if completed, are
49 available for public review.

50 (c) that the public has 30 days to submit written comments and evidence to the department
51 regarding the proposed permit, and the deadline for submitting written comments and evidence.

52 (d) that the applicant shall hold a public information hearing if the director determines there is
53 significant public interest and a significant air quality issue is involved; and

54 (e) that any person who does not submit written comments and evidence to the department by the
55 deadline will not receive notification of the department's decision regarding the proposed permit.

DRAFT

1 (2) the department shall provide the notice required by Paragraph (1) of Subsection C of 20.11.41.14
2 NMAC by regular mail or electronic mail to all individuals and organizations identified on a list maintained by the
3 department of persons who have stated in writing a desire to receive notices of all applications filed pursuant to
4 20.11.41 NMAC.

5 (3) the department shall allow all interested persons 30 days from the date the public notice is published
6 to deliver to the department written comment and evidence regarding the application for a permit;

7 (4) the department shall send notice of the department's action regarding the permit application and the
8 reasons for the action to every person who participated in the permitting action. The applicant shall be notified by
9 certified mail. All other interested persons who participated shall be notified by regular mail or electronic mail;

10 (5) when the department submits the public notice for publication, the department shall provide a copy
11 of the public notice to the mayor of each municipality within Bernalillo county, the Bernalillo county manager,
12 every Albuquerque city councilor within one-quarter mile of the center of the proposed location, every Bernalillo
13 county commissioner for each district within one-quarter mile of the center of the proposed location, and the
14 president or vice president for every neighborhood association whose boundaries are within one-quarter mile of the
15 center of the proposed location.

16 (6) the department shall mail a copy of the public notice by regular or electronic mail to every person
17 who submits a written request for a copy to the department.

18 [20.11.41.14 NMAC - N, X/X/XX]

20.11.41.15 PUBLIC INFORMATION HEARING

21 A. Before the department makes a final decision regarding the application, the applicant shall hold a public
22 information hearing if the director determines that there is significant public interest and a significant air quality
23 issue is involved. The applicant shall coordinate the date and time of the public information hearing with the
24 department, and the applicant shall make all arrangements regarding the public information hearing in consultation
25 with, and as required by the department. The applicant shall pay all expenses of the hearing and provide and pay for
26 notice of the public information hearing. The applicant shall not be required to reimburse the department for costs
27 related to department staff attending the public information hearing. The public information hearing shall be held
28 more than 30 days before the deadline for the department to make a final decision regarding the permit application.

29 B. The applicant shall:

30 (1) arrange for a location for the public information hearing that has been approved in advance and in
31 writing by the department and shall be near the proposed facility location if reasonably feasible;

32 (2) provide an English-Spanish and Spanish-English translator at the public information hearing if
33 required by the department;

34 (3) provide a hearing officer approved in advance and in writing by the department; the hearing officer
35 shall run the public information hearing; shall give all people present at the hearing a reasonable opportunity to
36 submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing; and shall not
37 make a final decision regarding the permit application;

38 (4) provide individuals to present applicant's proposal and to answer questions from attendees at the
39 public information hearing;

40 (5) at least ten days before the public information hearing, provide notice of the public information
41 hearing to the president of each neighborhood association in the city of Albuquerque and county of Bernalillo that is
42 within one-quarter mile of the center of the property on which the facility is located or proposed to be located; the
43 applicant shall obtain the name and address of the neighborhood association from the city of Albuquerque or county
44 of Bernalillo, as applicable; the notice shall contain the information required by Paragraphs (1) and (3)-(5) of
45 Subsection E of 20.11.41.13 NMAC. The notice of the public information hearing shall be in both English and
46 Spanish. The applicant shall obtain a sample public information hearing notice from the department, which the
47 applicant shall use as a template. If a public information hearing notice is returned to the applicant undelivered, the
48 applicant shall promptly confirm the address through the appropriate local government entity, and, if possible, shall
49 deliver a second copy of applicant's PIH notice to the president or vice president of the neighborhood association.
50 The applicant shall deliver proof of delivery as required by the department. If the applicant cannot successfully
51 deliver public notice to a neighborhood association as required, applicant shall include proof of applicant's good
52 faith efforts to comply with the requirements of Paragraph (5) of Subsection B of 20.11.41.15 NMAC.

53 (6) at least ten days before the public information hearing, publish and post notice of the public
54 information hearing as required by Paragraphs (3) and (4) of Subsection D of 20.11.41.13 NMAC. In addition, the

DRAFT

1 notice shall include the date, time, and location of the PIH, and the number of the proposed permit and a statement
2 that a final decision has not been made by the department regarding the proposed permit.

3 C. The department shall:

4 (1) mail notice of the public information hearing to all interested persons who have submitted written
5 comments or evidence to the department and to interested persons who have delivered to the department a written
6 request for notice regarding the application. A request to inspect or copy shall not be considered a written comment
7 for the purposes of this paragraph;

8 (2) require department staff to attend the PIH and be present during the applicant's presentation and
9 the questions by the attendees; and

10 (3) record the PIH and include the recording in the administrative record for the permit application.

11 The department shall provide a duplicate of the tapes to any person who requests a copy. The person requesting
12 shall reimburse the department for the cost of the duplicate tapes before the department makes the copies. The
13 person making the request for copying may instead provide the department with wrapped, new tapes that meet the
14 department specifications, and the department will not impose a charge for copying. If a transcript of the hearing is
15 requested, the department shall arrange for a transcription to be made, and the cost of the transcript shall be paid
16 promptly by the person who requested the transcript.

17 [20.11.41.15 NMAC - N, X/X/XX]

18 19 **20.11.41.16 PERMIT DECISIONS AND APPEALS:**

20 A. Within 30 days after the department has received an application for a permit, the department shall
21 review the application and determine whether it is administratively complete.

22 (1) If the department determines the application is administratively complete, the department shall
23 send a letter by certified mail to the applicant stating the department's determination.

24 (2) If the department determines the application is administratively incomplete, the department shall
25 send a letter by certified mail to the applicant stating what additional information or points of clarification are
26 necessary before the department can determine whether the application is administratively complete. A department
27 request for information shall be for information that is necessary for the department to perform a thorough review of
28 the application and to take final action on the application and may include technical clarifications, emission
29 calculations, emission factor usage and replacement of air dispersion modeling. The letter shall state a reasonable
30 deadline for the applicant to deliver the information or clarification. The applicant shall deliver the requested
31 information or clarification in writing by the deadline set by the department. The department may extend the
32 deadline for good cause as determined by the department. If the department does not receive the additional
33 information or clarification by the deadline, the department may deny the application. If the department has ruled an
34 application administratively incomplete three times, the department shall send a letter by certified mail to the
35 applicant stating the permit application is denied. If the department has denied the application, the applicant may
36 submit a new application and the fee required for a new application.

37 (3) If the department determines the application is administratively complete but no permit is required,
38 the department shall send a letter by certified mail to the applicant informing the applicant of the determination.

39 B. If the application is not subject to the requirements of 20.11.60 NMAC, *Permitting in*
40 *Nonattainment Areas*, or 20.11.61 NMAC, *Prevention of Significant Deterioration*, within 90 days after the
41 department has determined the application is administratively complete, the department shall grant, grant subject to
42 conditions or deny the permit, unless the director grants an extension for not more than 90 days for good cause,
43 including the need to hold a public information hearing.

44 C. If the department fails to take action on the application within the deadlines specified in
45 Subsection B of 20.11.41.16 NMAC, the department shall notify the applicant by certified mail that an extension of
46 time is required to process the application. The notification shall specify in detail the grounds for the extension.

47 D. The department shall grant, grant subject to conditions or deny the requested permit or permit
48 modification based on information contained in the department's administrative record of the permit application.
49 The administrative record shall consist of the application, any other evidence submitted by the applicant, any
50 evidence or written comments submitted by interested persons, any other evidence considered by the department, a
51 statement of matters officially noticed, and, if a public information hearing has been held, the evidence submitted at
52 the hearing. The applicant has the burden of demonstrating that a permit or permit modification should be approved.

53 E. A person who participated in a permitting action before the department shall be notified by the
54 department of the action taken and the reasons for the action. A request to inspect or copy information contained in
55 the department's administrative record of the permit application is not participation for purposes of Subsection E of
56 20.11.41.16 NMAC. The department shall notify the applicant by certified mail as required by the state act. The

DRAFT

1 department shall notify all other participating persons by regular mail sent to the legible address the participating
2 person has provided to the department. Notification by mail shall be deemed complete and given three days after
3 mailing to the address provided to the department.

4 **F.** A person who participated in a permitting action before the department and who is adversely affected by
5 the permitting action may file a petition for hearing before the board. The petition shall be in writing and shall be
6 delivered to the board within 30 days from the date notice is given of the department's action. The petition shall
7 conform to the requirements of Subsection B of 20.11.81.14 NMAC. The petitioner shall certify that a copy of the
8 petition has been mailed or hand delivered to the applicant if the petitioner is not the applicant. A hearing before the
9 board shall be conducted as required by 20.11.81 NMAC. Unless a timely request for a hearing is made, the
10 decision of the department shall be final.

11 **G.** If a timely request for a hearing is made, the local board shall hold a hearing within 60 days of receipt
12 of the petition as required by the state act at Subsection I of 74-2-7 NMSA 1978.

13 **H.** Any person adversely affected by an administrative action taken by the board may appeal in accordance
14 with the state act at 74-2-9 NMSA 1978.

15 [20.11.41.16 NMAC – N, X/X/XX]

16
17 **20.11.41.17 BASIS FOR PERMIT DENIAL:** After the department has determined a permit application is
18 administratively complete, the department may deny the application if:

19 **A.** the department determines the proposed construction, modification or technical revision will not meet
20 applicable standards, rules, regulations, provisions or requirements of the federal act, the state act or a board
21 regulation;

22 **B.** the department determines the source will cause or contribute to air contaminant levels in excess of a
23 national or New Mexico state ambient air quality standard;

24 **C.** the source will emit a hazardous air pollutant for which no NESHAP applies, if the HAP is emitted in a
25 quantity and duration that may cause imminent danger to public health;

26 **D.** the department determines the construction, modification, or technical revision would cause or
27 contribute to ambient concentrations in excess of a prevention of significant deterioration (PSD) increment;

28 **E.** the department concludes that construction of a proposed new or modified source cannot or will not be
29 completed within a reasonable time;

30 **F.** the department determines a conflict of interest exists regarding an application that was submitted
31 during accelerated review, as provided by 20.11.41.32 NMAC;

32 **G.** the emission data that was submitted by the applicant as part of the application is not acceptable to the
33 department for technical reasons;

34 **H.** the estimated emissions of air contaminants submitted by the applicant have not been appropriately
35 identified or quantified to the reasonable satisfaction of the department;

36 **I.** the issuance of a permit, permit modification or technical revision will not be consistent with achieving
37 progress toward attainment of the state ambient air quality standard that is being exceeded; or

38 **J.** the department has delivered three written notices requiring the applicant to provide specified
39 information the department needs in order to take final action on the application and the applicant either has not
40 provided the information by the deadline stated in the related notification or the applicant has submitted
41 information that the department has determined to be technically unacceptable. The department may agree in
42 writing to extend the deadline. A department request for information shall be for information that is necessary for
43 the department to perform a thorough review of the application and to take final action on the application and may
44 include technical clarifications, emission calculations, emission factor usage and replacement of air dispersion
45 modeling.

46 [20.11.41.17 NMAC - N, X/X/XX]

47
48 **20.11.41.18 APPLICANTS' ADDITIONAL LEGAL RESPONSIBILITIES:** The issuance of a permit
49 does not relieve any person from responsibility for complying with applicable provisions of the federal act, the state
50 act or any applicable regulation of the board.

51 [20.11.41.18 NMAC - N, X/X/XX]

52
53 **20.11.41.19 PERMIT CONDITIONS:**

54 **A.** The contents of the application specifically identified by the department shall become terms and
55 conditions of the permit, permit modification or permit revision.

DRAFT

1 **B.** The department shall specify conditions upon a permit as the department determines to be
2 appropriate, including:

3 (1) placement of individual emission limits on the source for which the permit is issued, as
4 determined on a case-by-case basis, but the individual emission limits shall be only as restrictive as the more
5 stringent of the following:

6 (a) the extent necessary to meet the requirements of the federal act, state act or board
7 regulations; or

8 (b) the emission rate specified in the permit application;

9 (2) a requirement that the source install and operate control technology, determined on a case-by-case
10 basis, sufficient to meet the requirements of the federal act, state act or board regulations;

11 (3) compliance with applicable NSPS and NESHAP;

12 (4) imposition of reasonable restrictions and limitations other than restrictions and limitations relating
13 to emission limits or emission rates, including throughput limitations, hours of operation, and unpaved haul road
14 speed limits;

15 (5) any combination of the above; and

16 (6) in the case of a modification, the requirements of Subsection B of 20.11.41.19 NMAC apply only
17 to the emission units involved in the modification.

18 **C.** The department may impose additional conditions in order to meet requirements of the federal act,
19 state act, or a board regulation including:

20 (1) a schedule of construction;

21 (2) a condition requiring timely revision of permit terms or conditions;

22 (3) sampling ports of a size, number and location as the department may require;

23 (4) safe access to each port;

24 (5) instrumentation to monitor and record emission data including continuous emission monitoring;

25 (6) any other reasonable sampling, testing and ambient monitoring and meteorological facilities and
26 protocols;

27 (7) periodic testing pursuant to 20.11.41.22 NMAC, *Performance Testing Following Startup*

28 (8) periodic reports;

29 (9) performance of air pollution control equipment; and

30 (10) monitoring, recordkeeping and reporting for hours of operation, throughput, capacity and other
31 parametric information.

32 **D.** Every term or condition imposed by the department on a permit is enforceable to the same extent
33 as a regulation of the board.

34 **E.** All permits issued pursuant to 20.11.41 NMAC after the mo/da/yr effective date of 20.11.41
35 NMAC shall be valid for no longer than 10 years. Applications for a permit renewal shall be submitted to the
36 department, with the required fee, one year before the permit expiration date.

37 [20.11.41.19 NMAC - N, X/X/XX]

38 **20.11.41.20 PERMIT SUSPENSION OR REVOCATION:**

39 **A.** The department may suspend or revoke a permit if:

40 (1) the construction of a new stationary source or modification of a stationary source has not
41 commenced within one year or more from the date the permit was issued;

42 (2) during construction or modification, work is suspended for a total of one year or more;

43 (3) any permitted source has temporarily ceased operation for five years or more or permanently
44 ceased operations; or

45 (4) the director determines based on any credible evidence that a person has violated or is violating a
46 requirement or prohibition of the federal act, the state act, board regulation or a condition of a permit issued pursuant
47 to 20.11.41 NMAC.

48 **B.** If a permit has been revoked for any reason included in Paragraphs (1) – (4) of Subsection A of
49 20.11.41.20 NMAC, a new application for a permit shall be submitted to the department if the applicant wishes to
50 resume operation.

51 **C.** No fewer than 30 days before a permit suspension or revocation becomes effective, the department
52 shall notify the permittee of the proposed action by certified mail or personal service. The notification shall include
53 the date by which the permittee may either respond in writing to the department or make a written request for a
54 public hearing before the board. The permittee's request for a hearing before the board shall be delivered to the
55 board no fewer than 30 days after the permittee has received the notice of suspension or revocation. The permittee's
56

DRAFT

1 response to the department or request for a board hearing shall state the reasons the permit should remain active. If
2 the permittee does not deliver a written response to the department or a hearing request to the board by the required
3 date, the suspension or revocation shall be final and the department shall issue a final notice of suspension or
4 revocation and send the final notice to the permittee by certified mail or personal service. The final notice shall state
5 the date the permit suspension or revocation is effective. The permittee shall cease all construction and operation of
6 the source no later than the date of permit suspension or revocation that is stated in the final notice.

7 **D.** If a timely request for public hearing is received by the board, the board shall hold the hearing
8 within 60 days after receipt of the request. The board shall notify the permittee by certified mail of the date, time
9 and place of the hearing. The burden of proof shall be upon the permittee at the hearing. The board may designate a
10 hearing officer to take evidence in the hearing and may direct the hearing officer to provide proposed findings of
11 fact, conclusions of law, a recommended decision with reasons for the recommendation, and a proposed final order.
12 Based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action of the
13 department.

14 [20.11.41.20 NMAC - N, X/X/XX]
15

16 **20.11.41.21 PERMITTEE'S OBLIGATIONS TO INFORM THE DEPARTMENT:** After a permit is
17 issued pursuant to 20.11.41 NMAC, the permittee shall inform the department by letter, facsimile or electronic mail
18 of:

19 **A.** the date of anticipated initial startup of the source no fewer than 30 days before the anticipated
20 initial startup date;

21 **B.** the date of anticipated initial startup of a portable stationary source no fewer than 2 days before
22 the anticipated initial startup date;

23 **C.** the date of actual initial startup of the source or portable stationary source no more than 15 days
24 after actual startup has occurred;

25 **D.** the date a portable stationary source leaves and returns to Bernalillo county;

26 **E.** any change of ownership, operator or permittee no more than 15 days after the change has
27 occurred; and

28 **F.** any permit update or correction as required by 20.11.41 NMAC no more than 60 days after the
29 permittee knows or should have known about the condition that requires updating or correction of the permit.

30 [20.11.41.21 NMAC - N, X/X/XX]
31

32 **20.11.41.22 NMAC PERFORMANCE TESTING:**

33 **A.** Within 60 days after achieving the maximum production rate at which a source will be operated, but not
34 more than 180 days after initial startup of the source, the department may require the permittee to conduct an initial
35 performance test. The permittee shall notify the department no fewer than 30 days before the test date by submitting
36 a testing protocol, including test methods, to the department for pre-approval and shall allow a representative of the
37 department to be present at the test. Whenever the requirements of 40 CFR 60, 61 or 63 apply, the test methods
38 specified in the code of federal regulations shall be used. No more than 30 days after the test is completed, the
39 permittee shall deliver a written report of the test results to the department.

40 **B.** The department may require the permittee to perform initial testing or additional testing if the
41 department determines that:

42 (1) an inspection of the source indicates noncompliance with any regulation or permit condition;

43 (2) previous testing indicated noncompliance with emission limits established by the permit; or

44 (3) the test was technically unsatisfactory.

45 **C.** The permittee shall conduct performance testing as frequently as the department requires to determine
46 that the source being tested demonstrates compliance with the permit. The department may waive testing; reduce
47 testing frequency; extend testing deadlines; or authorize performance testing at less than 90% of the maximum
48 production rate, rated capacity, or permitted rate if requested in writing by the permittee to the department no fewer
49 than 60 days before the test. The department shall review all requests and notify the permittee of its decision in
50 writing no fewer than 30 days before the performance test. The department's determination shall be final.

51 [20.11.41.22 NMAC - N, X/X/XX]
52

53 **20.11.41.23 TEMPORARY RELOCATION OF PORTABLE STATIONARY SOURCES:**

54 **A.** The permittee of a portable stationary source previously included in a permit issued pursuant to
55 20.11.41 NMAC may submit a written request to the department seeking approval to temporarily relocate and

DRAFT

1 operate the portable stationary source at a proposed location. Temporary relocations shall not exceed at total of 365
2 consecutive days.

3 **B.** The permittee of a portable stationary source shall not construct or operate at the new location
4 until the department approves the relocation request in writing.

5 **C.** The permittee of a portable stationary source that has been issued a permit pursuant to 20.11.41
6 NMAC shall submit a relocation application no fewer than 60 days before the date the permittee proposes to
7 commence operations at a new location within Bernalillo county. The permittee shall operate the portable stationary
8 source at the proposed new location in a manner that is consistent with the permit conditions unless the department
9 approves or imposes additional or more restrictive operational requirements or conditions. The relocation
10 application shall:

11 (1) be submitted on forms provided by the department;

12 (2) include an equipment list that shall include make, model, manufacture date, serial number and rated
13 capacity; production rates, and emissions estimates for each process unit;

14 (3) include a description of all stationary sources that have an air quality source registration or permit,
15 and all residences, offices, schools, and medical facilities that are located within one-quarter of a mile from the
16 center of the property of the proposed new location;

17 (4) include an EPA-approved air dispersion model executed for the proposed new location that
18 demonstrates compliance with the NAAQS and the NMAAQs; the modeling protocol shall comply with the
19 requirements of Paragraph (4) of Subsection C of 20.11.41.13 NMAC unless waived in writing by the department;

20 (5) include all information required by 20.11.41.13 NMAC determined to be relevant by the department
21 and all additional information the department reasonably requires; and

22 (6) be signed by the operator, owner or an authorized representative certifying to the accuracy of all
23 information as represented in the application and any attachments.

24 **D.** The permittee shall comply with the public notice requirements imposed by the department. In
25 determining whether to require public notice, the department may take into consideration the proposed duration of
26 operation, the proposed location, the nature and amount of emissions, anticipated public concerns and other relevant
27 factors.

28 **E.** The department may require the permittee to hold a public information hearing for good cause.

29 **F.** The department may deny the request to relocate the portable stationary source if the relocation
30 application does not include all information required by Subsection C of 20.11.41.23 NMAC, or if the relocation
31 application is submitted to the department fewer than 60 days before the proposed relocation date.

32 **G.** The department shall not approve the relocation if the department determines the relocation will
33 result in an exceedance of any NAAQS or NMAAQs at the proposed new location.

34 **H.** No more than 60 days after the department receives the relocation application, the department
35 shall approve, deny or approve the relocation with conditions, or require that the permittee hold a public information
36 hearing regarding the relocation request.

37 **I.** If the stationary source has been issued a permit pursuant to a board regulation but has not been
38 designated in the permit as a portable stationary source, and the source wishes to relocate within Bernalillo county or
39 be classified as a portable stationary source, the request to relocate the source shall be treated as a proposed permit
40 modification and the permittee shall comply with the requirements of 20.11.41.29 NMAC.

41 [20.11.41.23 NMAC - N, X/X/XX]

42 **20.11.41.24 EMERGENCY PERMITS:**

43 **A.** The department may issue an emergency permit when the director determines an emergency
44 situation exist that threatens public health, safety or welfare, and that a source subject to 20.11.41 NMAC should be
45 immediately constructed, modified or relocated in order to mitigate, prevent or remedy the emergency.

46 **B.** In order to prevent worsening an emergency situation, department personnel shall evaluate the
47 emissions from the source to determine what conditions shall be included in the emergency permit.

48 **C.** If a person commits a negligent or unlawful act, including failing to apply in a timely manner for a
49 permit, permit modification, relocation or technical revision, or if a source is operated in a negligent or unlawful
50 manner, then the act, failure to act or operation shall not qualify as an emergency for the purposes of 20.11.41.24
51 NMAC.

52 **D.** The following requirements shall not apply to emergency permits processed pursuant to
53 20.11.41.24 NMAC: Subsection D of 20.11.41.13 NMAC; Subsection C of 20.11.41.14 NMAC; 20.11.41.15
54 NMAC; and Subsections A and B of 20.11.41.16 NMAC.

DRAFT

1 E. If required by the department, the permittee shall not commence emergency construction,
2 modification or relocation until the department has issued an emergency permit.
3 [20.11.41.24 NMAC - N, X/X/XX]

5 **20.11.41.25 NONATTAINMENT AREA REQUIREMENTS:**

6 A. 20.11.41.25 NMAC applies to:

7 (1) a new source or modification of an existing source that will emit a regulated air contaminant that
8 will cause an ambient impact of the contaminant in excess of a significant ambient concentration included in
9 20.11.41.33 NMAC, *Significant Ambient Concentrations*, table 1, at a location that does not meet the standards
10 incorporated in 20.11.8 NMAC, *Ambient Air Quality Standards*, for that contaminant;

11 (2) a new source or modification of an existing source that is not a major stationary source or major
12 modification as defined in 20.11.60 NMAC, *Permitting in Nonattainment Areas*, and will emit a regulated air
13 contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration
14 incorporated in 20.11.41.33 NMAC, *Significant Ambient Concentrations*, table 1, at a location that does not meet the
15 NAAQS for that contaminant; and

16 (3) an existing source that does not propose an increase in emissions but will emit a regulated air
17 contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration
18 included in 20.11.41.33 NMAC, *Significant Ambient Concentrations*, table 1, at any location that does not meet the
19 20.11.8 NMAC standards for that contaminant.

20 B. A new source or modification of an existing source subject to 20.11.41.25 NMAC shall offset the
21 ambient impact of its emissions by:

22 (1) obtaining emission offsets for proposed emissions in an amount greater than one-to-one so that a
23 net air quality benefit will result; and

24 (2) ensuring emission offsets are quantifiable, enforceable and permanent by complying with the
25 following sections of 20.11.60 NMAC:

26 (a) 20.11.60.17 NMAC, *Emission Offset Baseline*;

27 (b) 20.11.60.18 NMAC, *Emission Offsets*; and

28 (c) 20.11.60.20 NMAC, *Air Quality Benefit*.

29 C. An existing source that is subject to 20.11.41.25 NMAC shall demonstrate a net air quality benefit
30 of at least a 20 percent reduction in ambient impact for each applicable contaminant. The 20 percent reduction shall
31 be calculated by subtracting the projected source impact from the existing source impact and dividing the result by
32 the existing source impact. The net air quality benefit also shall also comply with 20.11.60.20 NMAC, *Air Quality*
33 *Benefit*.

34 [20.11.41.25 NMAC - N, X/X/XX]

36 **20.11.41.26 COMPLIANCE CERTIFICATION:**

37 A. Notwithstanding any other provision in the New Mexico state implementation plan for air quality,
38 a permittee may use monitoring required by 20.11.42 NMAC, *Operating Permits*, in addition to compliance
39 methods specified in a permit issued to the source for the purpose of submitting a compliance certification.

40 B. 20.11.41.26 NMAC applies only to sources that are subject to 20.11.41 NMAC and are defined as
41 a major source in 20.11.42 NMAC, *Operating Permits*.

42 [20.11.41.26 NMAC - N, X/X/XX]

43
44 **20.11.41.27 ENFORCEMENT:** Notwithstanding any other provision in the New Mexico state
45 implementation plan for air quality, any credible evidence may be used to determine whether a person has violated
46 or is in violation of the terms or conditions of a permit issued pursuant to 20.11.41 NMAC, including a permit issued
47 to a source that meets the applicability requirements 20.11.61 NMAC, *Prevention of Significant Deterioration*, or
48 20.11.60 NMAC, *Permitting in Nonattainment Areas*.

49 A. Information obtained by using the following methods is presumptively credible evidence of
50 whether a violation has occurred at a source:

51 (1) a monitoring or information-gathering method approved for the source pursuant to 20.11.42
52 NMAC and incorporated in an operating permit; or

53 (2) compliance methods specified the New Mexico state implementation plan for air quality.

54 B. The following are presumptively credible testing, monitoring or information gathering methods:

55 (1) any federally enforceable monitoring or testing method, including methods authorized or required
56 by 40 CFR, parts 51, 60, 61, 63 and 75; and

DRAFT

1 (2) other testing, monitoring or information gathering methods that the department determines
2 produces information comparable to information produced by any method authorized by Subsection A of
3 20.11.41.27 NMAC or Paragraph (1) of Subsection B of 20.11.41.27 NMAC
4 [20.11.41.27 NMAC - N, X/X/XX]

6 20.11.41.28 ADMINISTRATIVE AND TECHNICAL PERMIT REVISIONS:

7 A. Administrative Permit Revision:

8 (1) An administrative permit revision may be used by the department or requested by the permittee to
9 revise a permit that has been issued pursuant to 20.11.41 NMAC in order to:

- 10 (a) correct a typographical error;
- 11 (b) identify a change in ownership, name, address or contact information of any person
12 identified in the permit;
- 13 (c) incorporate a change in the permit if the change is limited to retiring an emission unit at the
14 facility, which shall be effective when the department receives written notice that the emission unit has ceased
15 operation; and
- 16 (d) incorporate a change in the permit to include a source or activity at the facility if the facility
17 or activity is exempted by Paragraph ~~(2)~~ (3) of Subsection B of 20.11.41.2 NMAC, *Exemptions*

18 (2) An administrative permit revision shall:

- 19 (a) not be subject to Subsection D of 20.11.41.13 NMAC, *Applicant's Public Notice*
20 *Requirements*;
- 21 (b) not be subject to 20.11.41.14 NMAC, *Public Notice by Department – Public Participation*;
- 22 (c) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*; and
- 23 (d) be submitted on forms provided by the department.

24 (3) When the department receives a revision form, the department shall review the form. If the
25 department determines the revision qualifies as an administrative revision, the department shall file the revision with
26 the permit. However, the procedure authorized by Subsection A of 20.11.41.28 NMAC may not be used to create
27 federally enforceable conditions or emissions limitations to avoid any applicable requirement.

28 B. Technical Permit Revision:

29 (1) A technical permit revision may be requested by a permittee:

- 30 (a) to incorporate a change in the permit if the change only involves a change in monitoring,
31 record keeping or reporting requirements, if the department determines the change does not reduce the enforceability
32 of the permit;
- 33 (b) to incorporate a change in the permit if the change only involves incorporating permit
34 conditions, including emissions limitations, but only if the source existed on August 31, 1972, and the source has
35 been in regular operation since that date;
- 36 (c) if the permittee wishes to impose a voluntary reduction of an emission limitation that was
37 included as a specific permit conditions pursuant to Subsection B of 20.11.41.19 NMAC, *Permit Conditions*;
- 38 (d) to incorporate a change at a facility by replacing an emissions unit for which an allowable
39 emissions limit has been established in the permit, but only if the new emissions unit:
- 40 (i) is equivalent to the replaced emissions unit, and serves the same function within the
41 facility and process;
- 42 (ii) has the same or lower potential emission rates;
- 43 (iii) has the same or higher control efficiency, and stack parameters that are at least as
44 effective in dispersing air pollutants;
- 45 (iv) would not result in an increase of the potential emission rate of any other equipment
46 at the facility;
- 47 (v) after the technical permit revision is approved by the department, shall be subject to
48 the same or lower allowable emissions limits under the permit and to all other permit conditions that applied to the
49 replaced emissions unit before the technical permit revision;
- 50 (vi) when operated under applicable permit conditions, and as determined by the
51 department, will not cause or contribute to a violation of any NAAQS and NMAAQs;
- 52 (vii) as determined by the department, will not require additional permit conditions to
53 ensure the enforceability of the permit, such as additional record keeping or reporting in order to establish
54 compliance; and
- 55 (viii) does not emit a regulated air contaminant not previously emitted.

DRAFT

1 (e) in order to reduce the potential emission rate of a unit or source, incorporates terms and
2 conditions in the permit, such as a cap on hours of operation, limitations on throughput of a specific product or
3 products, or limitations on equipment capacity.

4 (2) An application for a technical revision to a permit shall:

5 (a) not be subject to Subsection D of 20.11.41.13 NMAC, *Applicant's Public Notice*
6 *Requirements*;
7 (b) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*;
8 (c) not be subject to 20.11.41.14 NMAC, *Public Notice by Department – Public Participation*;
9 and

10 (d) be submitted on forms provided by the department, with all information submitted by the
11 applicant certified as required by Paragraph (13) of Subsection C of 20.11.41.13 NMAC, *Permit Applications*.

12 (3) Within 30 days of receipt of the application, the department shall approve or deny the technical
13 permit revision, or inform the applicant in writing that the request must be submitted as a permit modification.

14 (4) The department may deny an application for a technical permit revision or require that the
15 application be submitted as a permit modification if:

16 (a) the revision does not meet the criteria included in Subsection B of 20.11.41.28;
17 (b) in the judgment of the department, the revision would require a decision on a significant or
18 complex issue, or involve a substantive change; or

19 (c) in the judgment of the department the permittee has submitted multiple or subsequent
20 applications for technical permit revisions under 20.11.41.28 NMAC that segment a larger revision or modification
21 that otherwise would not be eligible for a technical permit revision.

22 (5) The technical permit revision shall become effective when approved in writing by the department.
23 The department shall file the technical permit revision with the permit. However, the procedure established in
24 20.11.41.28 NMAC may not be used to create federally enforceable conditions or emissions limitations to avoid an
25 applicable requirement.

26 [20.11.41.28 NMAC - N, X/X/XX]
27

28 **20.11.41.29 PERMIT MODIFICATION:** A person who proposes a modification of a stationary source
29 shall comply with all requirements of 20.11.41 NMAC. Applications for permit modifications shall be processed
30 in accordance with all requirements established by 20.11.41 NMAC for permit applications, including public notice,
31 review, fees and hearing procedures.

32 [20.11.41.29 NMAC - N, X/X/XX]
33

34 **20.11.41.30 PERMIT REOPENING, REVISION AND REISSUANCE**

35 **A.** The department may impose reasonable terms and conditions upon a permit, including a schedule
36 of construction, the maximum period of time the permit shall be valid, and a condition requiring timely revision of
37 permit terms or conditions in order to meet new requirements, if any, under any federally required and approved
38 state implementation plan revision. The department may reopen, revise and reissue a permit if the department
39 determines:

40 (1) additional applicable requirements of the federal Clean Air Act or the New Mexico Air Quality
41 Control Act become applicable to the source, including excess emission requirements under the Title IV acid rain
42 program;

43 (2) the permit contains a substantive material mistake or that an inaccurate statement was made in the
44 permit application that resulted in incorrect or inappropriate evaluation of ambient air quality impacts or incorrect
45 or inappropriate terms and conditions in the permit, including emissions limitations;

46 (3) the permit requires reopening, revision and reissuance to ensure compliance with all applicable
47 requirements of the federal act, the state act and the board regulations;

48 (4) the permittee failed to disclose a material fact or a regulation that is applicable to the source as
49 required in the permit application process, and the applicant knew or should have known about the material fact or
50 regulation at the time the application was submitted; or

51 (5) the terms and conditions of a permit have been or are being repeatedly violated.

52 **B.** The department shall notify the permittee by certified mail no fewer than 60 days before the date
53 of the reopening of the permit, except that a shorter time period may be specified in case of an emergency. The
54 notification shall include a description of the reason or grounds for the reopening and revisions required, and any
55 information to be submitted to the department by the permittee. The permittee shall submit all required additional
56 information to the department no later than 30 days after receipt of the notification from the department. A

DRAFT

1 permittee may request additional time to provide required information by delivering the request in writing to the
2 department. The extension of time shall be effective if approved in writing by the department.

3 C. A permit that has been reopened and reissued may be appealed pursuant to 20.11.81 NMAC.
4 [20.11.41.30 NMAC - N, X/X/XX]

6 **20.11.41.31 GENERAL STATIONARY SOURCE PERMITS:**

7 A. Issuance of General Stationary Source Permits:

8 (1) The department may, after notice under Subsections A-C of 20.11.41.14 NMAC and a public
9 hearing with opportunity for public participation under 20.11.41.15 NMAC issue one or more general stationary
10 source permits, each covering numerous similar sources. Sources permitted as a general stationary source permit
11 shall be generally homogeneous in terms of operations, processes and emissions, subject to the same or substantially
12 similar requirements, and not subject to case-by-case standards or requirements.

13 (2) Each general stationary source permit shall:

14 (a) Describe which sources may qualify to apply for a general stationary source permit;

15 (b) Specify the contents of a complete application for a general stationary source permit. The
16 department may, in the general stationary source permit, provide for applications which deviate from the
17 requirements under 20.11.41.13 NMAC, provided that such applications include:

18 i. All information necessary to determine qualification for, and to assure compliance
19 with, the general stationary source permit; and

20 ii. Applicant's public notice requirements including, at a minimum, a notice: a)
21 published once in the legal notices section of a newspaper in general circulation in the county or counties in which
22 the property on which the facility is proposed to be constructed or operated is located; and b) posted at the proposed
23 or existing facility entrance in a publicly accessible and conspicuous place on the property on which the facility is,
24 or is proposed to be, located, until the general stationary source permit is granted or denied;

25 (c) Contain permit terms and conditions which apply to all sources permitted as a general
26 stationary source permit, and which include:

27 i. Sufficient terms and conditions to assure that all sources permitted and operating in
28 accordance with the general stationary source permit will meet all applicable requirements under the federal Act, the
29 New Mexico Air Quality Control Act, 74 NMSA 1978, including 20.11.61 NMAC, *Prevention of Significant*
30 *Deterioration*, 20.11.63 NMAC, *New Source Performance Standards*, 20.11.64 NMAC, *Emission Standards for*
31 *Hazardous Air Pollutants*, and 20.11.60 NMAC, *Permitting in Nonattainment Areas* and will not cause or contribute
32 to air contaminant levels in excess of any National or New Mexico Ambient Air Quality Standard; and

33 ii. Monitoring, record keeping and reporting requirements appropriate to the source and
34 sufficient to ensure compliance with the general stationary source permit. At a minimum, the general stationary
35 source permit shall specify where the records shall be maintained, how long the records shall be retained and that all
36 records or reports shall be made available upon request by the department; and

37 iii. As appropriate, terms and conditions to address and report emissions occurring
38 during upsets, startups and maintenance;

39 (d) Specify that any document, including any application form, report, compliance certification
40 and supporting data, submitted pursuant to 20.11.41.31 NMAC shall contain a certification that meets the
41 requirements of Paragraph 11 of Subsection C of 20.11.41.13 NMAC.

42 **B. Revisions to a General Stationary Source Permit:**

43 (1) The department may, after notice under Subsections A-C of 20.11.41.14 NMAC and a public
44 hearing with opportunity for public participation under 20.11.41.15 NMAC, revise a general stationary source
45 permit. Notice of the proposed revision shall also be sent to the owner or operator of all sources possessing a
46 general stationary source permit.

47 (2) Revision to a general stationary source permit shall include a reasonable transition schedule for
48 existing sources possessing a general stationary source permit to comply with the revision. The department shall
49 revise the general permit terms and conditions only to the extent necessary to ensure that the requirements of Sub-
50 paragraph (c) of Paragraph 2 of Subsection A of 20.11.41.31 NMAC are met.

51 **C. Application under a General Stationary Source Permit:**

52 (1) The owner or operator of a source required to obtain a permit pursuant to 20.11.41 NMAC and
53 which qualifies to apply for a general stationary source permit shall either:

54 (a) Apply to the department to obtain the general stationary source permit; or

55 (b) Apply for a stationary source permit under 20.11.41.2 NMAC.

DRAFT

1 (2) Within thirty (30) days of receiving an application for a general stationary source permit, the
2 department shall review the application for completeness and shall grant or deny the application. The department
3 shall not grant the general stationary source permit until at least fifteen (15) days after the date the applicant's public
4 notice was initiated. The department shall notify the applicant of its determination by certified mail. The
5 department shall attach the general stationary source permit to a copy of the approved application.

6 (3) The department shall grant a general stationary source permit to a source only if:

7 (a) The application is complete and meets the requirements of 20.11.41.31 NMAC; and

8 (b) The source meets the terms and conditions of the general stationary source permit.

9 (4) The department may grant or deny the application for a general stationary source permit without
10 repeating the public notice and participation procedures required under 20.11.41.14 NMAC and 20.11.41.15
11 NMAC.

12 (5) Administrative review under Sections 74-2-7.H through L NMSA 1978 shall be available for a
13 determination made by the department of whether or not a source qualifies to apply for a general stationary source
14 permit. However, administrative review of an application for coverage under a general stationary source permit
15 shall not extend to administrative review of the general stationary source permit itself. Administrative review of the
16 general stationary source permit shall be available under Sections 74-2-7.H through L NMSA 1978 only upon
17 issuance or revision of the general stationary source permit as a permitting action.

18 (6) Sources shall be subject to enforcement action for construction without a general stationary
19 source permit if:

20 (a) Construction of a source is commenced prior to the receipt of the department's written
21 approval of a general stationary source permit; or

22 (b) It is determined after construction commences that a source does not qualify for coverage
23 under the general stationary source permit.

24 (7) A general stationary source permit may be suspended or revoked, consistent with the provisions
25 of 20.11.41.20 NMAC. The owner or operator shall notify the department of the actual startup of a source and any
26 ownership and operator changes, consistent with the provisions of 20.11.41.21 NMAC.

27 **D. Modifications to a General Stationary Source Permit:** Each general stationary source permit
28 shall provide that, prior to modification of a source which is permitted as a general stationary source permit, the
29 owner or operator shall:

30 (1) For those modifications for which the facility will continue to meet the conditions of the general
31 stationary source permit after the modification, notify the department in writing of such modification; and

32 (2) For those modifications for which the source will not continue to meet the conditions of the
33 general stationary source permit after such modification, obtain a stationary source permit from the department
34 under 20.11.41 NMAC prior to the modification.

35 [20.11.41.31 NMAC - N, X/X/XX]

36 **20.11.41.3132 ACCELERATED REVIEW:**

37 **A. Qualified outside contractors:**

38 (1) The department shall request proposals from persons interested in providing assistance as a
39 qualified outside contractor in the accelerated review of permit applications under 20.11.41 NMAC.

40 (2) The department shall evaluate the proposals submitted by the interested persons. To be eligible to
41 contract with the department as a qualified outside contractor, a person must be:

42 (a) legally qualified to contract with the department; and

43 (b) qualified to assist the department in review of permit applications, as determined by the
44 department in the department's sole discretion.

45 (3) Persons who are selected as qualified outside contractors shall be under contract with the
46 department to provide accelerated review of permit applications pursuant to 20.11.41.32 NMAC.

47 **B. Requests for accelerated review:**

48 (1) At the sole discretion of the applicant, an applicant for a permit pursuant to 20.11.41.32 NMAC
49 may request accelerated permit review of the application by a qualified outside contractor. Applications for
50 accelerated review shall be preceded by a pre-application meeting between the applicant and the department.
51 Requests for accelerated review shall not be granted unless there is at least one qualified outside contractor under
52 contract with the department pursuant to Paragraph (3) of Subsection A of 20.11.41.32 NMAC. If there are no
53 persons under contract to provide accelerated review, the department shall review the application in accordance with
54 20.11.41.16 NMAC.

55 (2) A request for accelerated permit review shall be submitted with the permit application and a
56

DRAFT

1 corporate check or money order for the amount of the accelerated review filing fee as specified in 20.11.2 NMAC.
2 The department shall notify the applicant of the names and addresses of the qualified outside contractors. The
3 applicant shall deliver a copy of the application, by mail or hand delivery, to each qualified outside contractor
4 identified by the department, unless the applicant is aware of a conflict of interest.

5 (3) Participation in the accelerated permit review process shall not relieve the applicant of any
6 responsibilities imposed by a board regulation.

7 (4) Applicants who have chosen accelerated review pursuant to 20.11.41.32 NMAC shall pay the
8 accelerated review fee required by 20.11.2 NMAC in addition to all other applicable fees imposed by 20.11.2
9 NMAC.

10 (5) Qualified outside contractors under contract that are interested in performing accelerated review
11 of a specific application shall submit to the department:

12 (a) a statement of interest;

13 (b) a statement of qualifications for the specific application;

14 (c) an estimate of the cost and schedule for the review; and

15 (d) a notarized affidavit attesting that no conflict of interest exists on the specific permit
16 application.

17 (6) In the department's sole discretion, the department shall review the submittals and determine
18 which persons qualify to review a specific application.

19 (7) If no qualified outside person submits the four items required by Paragraph (5) of Subsection B of
20 20.11.41.32 NMAC, the department shall impose the accelerated review filing fee and the permit application review
21 fee required by 20.11.2 NMAC and review the application without the assistance of a qualified outside contractor
22 and in accordance with 20.11.41.16 NMAC.

23 (8) Before the department determines whether an application for accelerated review is
24 administratively complete, the department shall provide the applicant with a written bid summary of the qualified
25 outside contractor submittals that show the costs of the accelerated review and the anticipated schedule for
26 reviewing the application, drafting the permit and issuing the permit. The department shall determine whether an
27 application for accelerated review is administratively complete.

28 (9) Applicant's responsibilities for response to bid summary.

29 (a) Within five working days after the applicant receives the department's bid summary, the
30 applicant shall either:

31 (i) submit to the department a written recommendation to accept one of the accelerated
32 review bids, or a prioritized list of more than one of the accelerated review bids, including a brief justification for
33 the recommendation with a corporate check or money order payable to the department for the amount specified in
34 the bid summary and a notarized affidavit attesting that no conflict of interest exists regarding the applicant's
35 recommended selections; or

36 (ii) submit to the department a written withdrawal of the request for accelerated review.

37 (b) The department shall deem the applicant's request for accelerated review withdrawn if the
38 applicant fails to submit a written recommendation or written withdrawal within five working days after the
39 applicant has received the department's bid summary unless the applicant has submitted a written request for an
40 extension and the department has granted an extension in writing.

41 (10) Department's selection of qualified outside contractor.

42 (a) If the request for accelerated review is withdrawn, the department shall retain the
43 accelerated review filing fee required by 20.11.2 NMAC and shall review the application without the assistance of a
44 qualified outside contractor and pursuant to 20.11.41.16 NMAC.

45 (b) If the applicant recommends a qualified submittal, the department shall determine whether
46 to accept the recommended submittal. If the department accepts the recommended submittal, the department shall
47 instruct the qualified outside contractor to begin review of the application. If the department rejects the
48 recommended submittal, the department shall inform the applicant and allow the applicant to recommend an
49 alternate submittal pursuant to Paragraph (9) of Subsection B of 20.11.41.32 NMAC or, if there are no other
50 qualified submittals, the department shall retain the accelerated review filing fee required by 20.11.2 NMAC and
51 review the application without the assistance of a qualified outside contractor pursuant to 20.11.41.16 NMAC.

52 C. Disclosure of conflict of interest during accelerated review:

53 (1) The applicant and the qualified outside contractor have a continuing obligation to investigate
54 potential conflicts of interest and to immediately disclose any conflict of interest to the department in writing. If a
55 conflict of interest is not disclosed as required by Subparagraph (d) of Paragraph (5) of Subsection B of 20.11.41.32
56 NMAC and is later disclosed or discovered, the department may:

DRAFT

- (a) deny the application pursuant to 20.11.41.17 NMAC;
- (b) terminate accelerated review and review the application pursuant to 20.11.41.16 NMAC; or
- (c) allow accelerated review to continue after elimination of the conflict.

(2) In choosing among the options provided by Subparagraphs (a)-(c) of Paragraph (1) of Subsection C of 20.11.41.32 NMAC, the department shall consider whether the conflict of interest was disclosed or discovered, the timing of the disclosure or discovery, the applicant’s diligence in investigating potential conflicts of interest, any indication of intentional or willful failure to disclose, the significance of the conflict of interest, and the applicant’s ability to eliminate the conflict of interest in a timely manner.

D. Issuance of a permit after accelerated review:

(1) Upon completion of the review, the qualified outside contractor shall provide the department with a draft permit and all documentation pertaining to the permit application, including all communications, notes and drafts. At any time during the review, the qualified outside contractor shall provide the department with all documentation pertaining to a specific application requested by the department in writing. The documentation shall be subject to the Inspection of Public Records Act, Chapter 14, Article 2 NMSA 1978, and the confidential information section of the Air Quality Control Act, 74-2-11 NMSA 1978.

(2) The department shall review the analysis prepared by the qualified outside contractor and shall grant, grant subject to conditions or deny the requested permit pursuant to 20.11.41.17 NMAC. The department retains final authority to accept or reject the qualified outside contractor’s analysis regarding the permit application.

(3) The department shall not issue the permit until the applicant has paid both the accelerated review processing fee and the permit review fee required by 20.11.2 NMAC.
[20.11.41.32 NMAC - N, X/X/XX]

20.11.41.3233 SIGNIFICANT AMBIENT CONCENTRATIONS -- NONATTAINMENT

Table 1.

Pollutant	Averaging Time					
	Annual	24-hr	8-hr	3-hr	1-hr	1/2-hr
TSP	1.0 µg/m ³	5.0 µg/m ³	--	--	--	--
PM ₁₀	1.0 µg/m ³	5.0 µg/m ³	--	--	--	--
SO ₂	1.0 µg/m ³	5.0 µg/m ³	--	25 µg/m ³	--	--
H ₂ S	--	--	--	--	1.0 µg/m ³	5.0 µg/m ³
CO	--	--	0.5 mg/m ³	--	2.0 mg/m ³	--
NO ₂	1.0 µg/m ³	5.0 µg/m ³	--	--	--	--
NMHC	--	--	--	5.0 µg/m ³	--	--
Lead (Pb)	0.03 µg/m ³ quarterly					

[20.11.41.33 NMAC - N, X/X/XX]

20.11.41.3334 PERMIT STREAMLINING SOURCE CLASS CATEGORIES: [RESERVED]

[20.11.41.34 NMAC - N, X/X/XX]

HISTORY OF 20.11.41 NMAC:

Pre-NMAC History: The material in 20.11.41 NMAC was derived from that previously filed with the commission of public records – State records center and archives.

DRAFT

1 Resolution No. 1, Air Pollution Control Regulations of The Albuquerque Bernalillo County Air Quality Control
2 Board, 8/6/71;
3 Regulation No. 1, Air Pollution Control Regulations, 6/6/73;
4 Regulation No. 1, Air Pollution Control Regulations, 7/9/73;
5 Regulation No. 1, Air Pollution Control Regulations, 3/21/77;
6 Regulation No. 20, Permits. 3/24/82;
7 Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 3/24/82;
8 Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 7/21/87;
9 Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 6/5/91;
10 Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 2/26/93;
11 Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 5/23/94,
12 Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 12/16/94.
13

14 **History of Repealed Material:** [Reserved]
15

16 **Other History:**

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