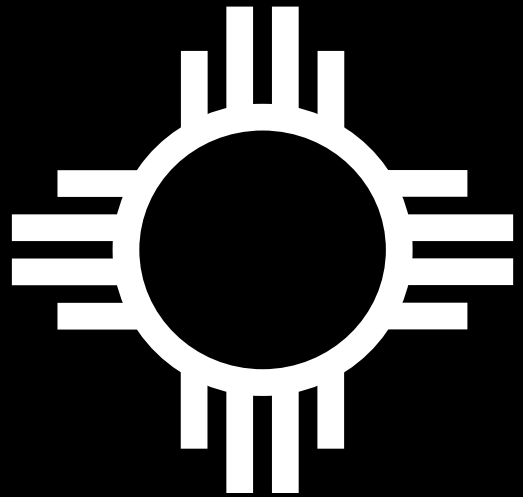


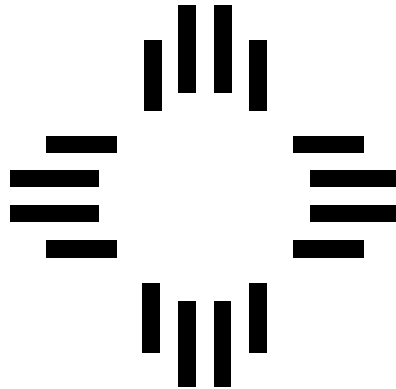
**NEW
MEXICO
REGISTER**



Volume XV
Issue Number 3
February 13, 2004

New Mexico Register

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February 13, 2004



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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Administrative Law Division
Santa Fe, New Mexico
2004

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New Mexico Register

Volume XV, Number 3

February 13, 2004

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Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF HEARING AND REGULAR MEETING

On March 10, 2004, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold a combined public hearing in the basement level Council/Commission Chambers, of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

* Proposal to amend 20.11.1 NMAC, General Provisions (Part 1), and to incorporate the complete and amended 20.11.1 NMAC into the New Mexico State Implementation Plan for air quality (SIP), as described below.

* Proposal to adopt a new regulation 20.11.8 NMAC, Ambient Air Quality Standards (Part 8), and incorporate the newly-adopted 20.11.8 NMAC into the SIP.

The purpose of the Part 1 phase of the combined hearing is to receive testimony on proposed changes to 20.11.1 NMAC, General Provisions, and also to receive testimony on placing amended Part 1 into the SIP. The Part 1 proposed regulation changes include:

* Adding a definition for the pollutant "PM2.5".

* Removing *Bernalillo County Air Quality Goals and Enforceable Ambient Air Quality Standards* from Part 1.

The purpose of the Part 8 phase of the combined hearing is to receive testimony on proposed new regulation 20.11.8 NMAC, Ambient Air Quality Standards, and also to receive testimony on placing amended Part 8 into the SIP. The proposed regulation adopts by reference:

* Federal and State of New Mexico Ambient Air Quality Standards that incorporate the current federal ozone 8-hour standard, the PM2.5 (fine particulate) 24-hour and annual standards, and the PM10 (coarse particulate) 24-hour and annual standards.

Following the combined hearing, the Board will hold its regular monthly meeting during which the Board is expected to consider adopting the proposed revisions to 20.11.1 NMAC, General Provisions, adopting the proposed new regulation 20.11.8 NMAC, Ambient Air Quality Standards, and incorporating both complete and amended regulations into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written notice of intent before 5:00 pm on Wednesday March 3, 2004 to: Attn: March Hearing Record, Mr. Dan Warren, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The notice of intent shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on March 3, 2004. The comments shall include the name, address and affiliation of the individual or organization submitting the statement. Written comments may also be submitted electronically to dwarren@cabq.gov and shall include the required name, address and affiliation information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, A/BCGC, 768-2600 (Voice); 768-2617 (FAX); or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

NOTICE OF PUBLIC HEARING

The Protective Services Division (PSD) will hold a public hearing in Santa Fe on Wednesday, February 25, 2004 from 1:00 p.m. to 4:00 p.m. in the Public Employees Retirement Association (P.E.R.A.) Building, 1120 Paseo de Peralta, 2nd floor conference room, number 227, to take comments regarding proposed revisions to the following PSD policies: General Provisions, Adoption Services, Foster Parenting, Permanency Planning.

The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearings. Documents are available in different formats to accommodate a particular disability. Anyone requesting such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-3991. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The proposed revisions may be reviewed at any Protective Services Division county office. County office locations may be determined by calling 505-827-8400 for location information. The proposed policy revisions may also be reviewed between 8:00 a.m.-5:00 p.m. (MST) at the PSD Directors office, Room 254, In the P.E.R.A. building in Santa Fe, NM. Copies of proposed policies may be obtained by contacting Linda McNall, Bureau Chief, CYFD-PSD, P.O. Drawer 5160, Santa Fe, NM

87502-5160, or by calling 505-827-3991. Copies can be requested through the use of the New Mexico relay system by calling 505-827-7586.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:30 a.m., on March 15, 2004, at the New Mexico State Library, Room 2022 (1205 Camino Carlos Rey), Santa Fe, New Mexico. The subject of the hearing will be Overpayment Recovery.

The Code of Federal Regulations in section 42 456.23 requires the single state Medicaid agency to conduct post-payment review. Statistical sampling methods are well recognized as reliable and acceptable audit tools. Consequently, the Department's procedure for auditing providers involves the use of sampling and extrapolation. The Department selects a statistically valid sample of the cases for which the provider received payment for the audit period in question and audits the provider's records for those cases. All incorrect payments determined by an audit of the cases in the sample are then totaled and extrapolated to the entire population of cases for which the provider has been paid during the audit period to determine the total incorrect payments. The proposed regulation will formalize the audit procedure described above, which has been accepted as a standard auditing procedure.

Interested persons may submit written comments no later than 5:00 p.m., March 15, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are

available for review on our Website at www.state.nm.us/hsd/register. or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 1:30 p.m., on March 15, 2004, at the New Mexico State Library, Room 2022 (1205 Camino Carlos Rey), Santa Fe, New Mexico. The subject of the hearing will be Third Party Liability.

Medicaid Payments Following Insurance or HMO Payment

This proposed regulation seeks to change the special provision for third party coverage provided through an HMO such that all third party payment amounts are treated in a like manner.

The Department is proposing to change the policy as it relates to HMO co-payments. The proposed policy, if implemented, will require providers to report payments from the third party resources. Reimbursement will be limited to the difference between the Medicaid allowed amount for the claim and the other third party payments such that the total amount allowed to the provider will not exceed the Medicaid allowed amount.

Medicaid Payments Following Medicare Payment

The Department is proposing to change the reimbursement policy by limiting the amount the Medicaid program pays to the provider for the Medicare co-insurance and deductible.

The Medicaid program will limit the amount paid for the co-insurance and deductible such that the payment from Medicare, plus the amount allowed by Medicaid for the co-insurance and deductible, will not exceed the Medicaid allowed amount for the service. When the Medicare payment exceeds the amount that Medicaid would have allowed, no payment will be made for the co-insurance and/or deductible.

Interested persons may submit written comments no later than 5:00 p.m., March 15, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register.htm or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD

NOTICE OF RULE MAKING HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a rule making hearing and regular board meeting will be held on Thursday March 5, 2004, at New Mexico Livestock Board Room, 300 San Mateo, NE Suite 100, Albuquerque, New Mexico, at 9:00 a.m. The Board will consider the rule covering: alternative branding of dairy cattle and transportation. Hearing on Estray #14078, and other matters of general business

Copies of the rule can be obtained by contacting Daniel Manzanares, Executive Director, New Mexico Livestock Board, 300 San Mateo, N. E., Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161. Interested persons may submit their views on the proposed rule to the Board at the above address and/or may appear at the scheduled hearing and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

**NEW MEXICO
COMMISSION OF
PUBLIC RECORDS**

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, March 2, 2004, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Ruben Rivera at 476-7902 by February 23, 2004. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Repeal

1.18.305 NMAC	ERRDS Office of the Attorney General
1.18.352 NMAC	ERRDS Educational Retirement Board
1.18.418 NMAC	ERRDS Department of Tourism
1.18.464 NMAC	ERRDS Professional Engineers and Land Surveyors Board
1.18.508 NMAC	ERRDS New Mexico Livestock Board
1.18.609 NMAC	ERRDS Office of Indian Affairs
1.18.780 NMAC	ERRDS Crime Victims Reparation Commission

New-Replacement

1.18.305 NMAC	ERRDS Office of the Attorney General
1.18.352 NMAC	ERRDS Educational Retirement Board
1.18.418 NMAC	ERRDS Department of Tourism
1.18.464 NMAC	ERRDS State Board of Licensure for Professional Engineers and Surveyors
1.18.508 NMAC	ERRDS New Mexico Livestock Board
1.18.609 NMAC	ERRDS New Mexico Office of Indian Affairs
1.18.780 NMAC	ERRDS Crime Victims Reparation Commission

New

1.18.356 NMAC	ERRDS Office of the Governor
1.18.361 NMAC	ERRDS Office of the Chief Information Officer
1.18.940 NMAC	ERRDS Public Schools Financial Authority
1.19.11 NMAC	LGRDS Soil and Water Conservation Districts

**NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

**STATE OF NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

**IN THE MATTER OF AMENDING
13.12.3 NMAC, UNINSURED AND
UNKNOWN MOTORISTS COVERAGE**

DOCKET NO. 04-00030-IN

**NOTICE OF HEARING ON PROPOSED RULEMAKING AND
PROCEDURAL ORDER**

I. SOLICITATION OF COMMENTS

The Superintendent of Insurance is issuing this notice to provide an opportunity for public

comment and to create a record for a decision on the proposed amendment of 13.12.3 NMAC, Uninsured and Unknown Motorists Coverage. The Superintendent requests written and oral comments from all interested persons and entities on the proposed amendment.

All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Superintendent's reliance on such information is noted in the order the Superintendent ultimately issues.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing be held on Wednesday, April 7, 2004 at 9:00 a.m. in the Fourth Floor Hearing Room of the P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule. All interested persons wishing to present testimony may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before Friday, April 2, 2004. All relevant and timely comments, including data, views, or arguments will be considered by the Superintendent before final action is taken in this proceeding. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also submit a diskette copy of written comments to the Docketing Office or e-mail a copy of written comments to elizabeth.bustos@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the

Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Insurance Division Staff shall cause a copy of this Notice to be published once in the New Mexico Register and once in the Albuquerque Journal. To obtain a copy of the proposed rule: (1) send the docket number, rule name, and rule number to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying and postage; (2) call the Docketing Office at 505-827-4526 with the docket number, rule name, and rule number (you will be billed \$5.00 to cover the cost of copying and postage); or e-mail Elizabeth Bustos at elizabeth.bustos@state.nm.us with the docket number, rule name, and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail at no charge). The proposed rule is also available for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

III. ADVISEMENTS

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, NMSA 1978, Section 2-11-1 et seq., regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ann Echols, on or before

April 2, 2004, at (505) 827-4559. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Echols.

DONE, this 28th day of January 2004.

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

_____/s/_____
ERIC P. SERNA,
Superintendent of Insurance

**End of Notices and
Proposed Rules Section**

Adopted Rules

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

20 NMAC 11.20, Airborne Particulate Matter, filed 5-29-96 is hereby repealed and replaced by 20.11.20 NMAC, Fugitive Dust Control, effective 3/1/04. The Albuquerque / Bernalillo Air Quality Control Board adopted these changes during its August 13, 2003 regular meeting. In addition, a technical change was made to Section 20.11.20.5 NMAC and approved at the Board's January 14, 2004 regular meeting.

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 20 FUGITIVE DUST CONTROL

20.11.20.1 ISSUING AGENCY: Albuquerque/ Bernalillo county air quality control board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2600.
[20.11.20.1 NMAC - Rp, 20 NMAC 11.20.1.1, 3/1/04]

20.11.20.2 SCOPE:
A. This part is applicable to all sources of fugitive dust in Bernalillo county, including paved and unpaved roadways, rights-of-ways and lots.

B. Exempt: This part does not apply to sources within Bernalillo county that are:

(1) located on Indian lands over which the Albuquerque/Bernalillo county air quality control board lacks jurisdiction; and

(2) hard rock mining pits and operations contained within the mining pit and permitted pursuant to State of New Mexico Mining Act. For the purposes of this part, sand and gravel mining operations are not exempted; and

(3) emergency maintenance operations that are intended to address an imminent threat to property or persons. However, reasonably available control measures must be employed once the emer-

gency has been addressed, if appropriate, and a report of all activities shall be filed with the department no later than 10 days after the incident has been concluded and the department shall determine if additional action, including a permit application submittal, is required before further non-emergency activities at the site; and

(4) ongoing stationary source operations that require permits pursuant to 20.11.41 NMAC or 20.11.42 NMAC and produce fugitive dust as defined in this part are exempt from obtaining a fugitive dust control permit and paying fees due under this part, but all construction at a stationary source site, whether it involves new construction or a site modification, is subject to this part.

C. Exempt for three years: The following eight sources of fugitive dust in Bernalillo county shall be exempt from the requirements of this part for three years from the effective date of this part. Before the three-year exemption expires, the board shall hold a hearing that includes a review of an emissions inventory of the eight sources and other significant sources of fugitive dust in Bernalillo county and decide if the exemptions shall be continued. If one or more of the three-year exemptions expire, the board shall also review the fugitive dust control fees to determine if they are adequate to support the fugitive dust control program.

(1) Areas zoned for agriculture and used for growing a crop; and

(2) bicycle trails, hiking paths, and pedestrian paths, horse trails or similar paths used exclusively for purposes other than travel by motor vehicles; and

(3) unpaved roadways serving six residential dwellings or fewer; and

(4) unpaved roadways less than one-quarter mile in length that are not short-cuts; and

(5) unpaved roadways on private easements serving residential uses that are in existence at the time this part becomes effective; and

(6) unpaved roadways on United States department of agriculture forest service or United States department of interior park service lands if the roadways are more than one-quarter of a mile from an occupied residence; and

(7) lots occupied by dwellings used solely for residential purposes or solely for non-commercial livestock operations smaller than three quarters of an acre, not including lots smaller than three-quarters of acre used for other purposes; and

(8) unpaved roadways within properties used for ranching and unpaved roadways within properties owned or con-

trolled by the United States department of energy or department of defense. However, this exemption only applies if the public does not have motor vehicle access to the roadways.

[20.11.20.2 NMAC - Rp, 20 NMAC 11.20.1.2, 3/1/04]

20.11.20.3 STATUTORY AUTHORITY: This part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance; Bernalillo county Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4.

[20.11.20.3 NMAC - Rp, 20 NMAC 11.20.1.3, 3/1/04]

20.11.20.4 DURATION: Permanent.

[20.11.20.4 NMAC - Rp, 20 NMAC 11.20.1.4, 3/1/04]

20.11.20.5 EFFECTIVE DATE: March 1, 2004, unless a later date is cited at the end of a section.

[20.11.20.5 NMAC - Rp, 20 NMAC 11.20.1.5, 3/1/04]

20.11.20.6 OBJECTIVE: To ensure that all persons conducting active operations that result in disturbed surface areas or involve bulk material handling use reasonably available control measures or other effective measures on an ongoing basis to prevent or abate injury to human health and animal and plant life and to prevent or abate unreasonable interference with public welfare, visibility and the reasonable use of property.

[20.11.20.6 NMAC - Rp, 20 NMAC 11.20.1.6, 3/1/04]

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

A. "Active operations" means any anthropogenic activity that is capable of generating, or generates fugitive dust, including but not limited to: bulk material storage, handling or processing; earth moving; soil or surface disturbance (e.g. discing, trenching, blading, scraping, clearing, grubbing, topsoil removal); construction, renovation, or demolition activities; movement of motorized vehicles on any paved or unpaved roadway or surface,

right-of-way, lot or parking area; or the tracking out or transport of bulk material onto any paved or unpaved roadway.

B. "Anthropogenic" means human caused changes in the natural or built condition of the environment.

C. "Bulk material" means sand, gravel, soil, aggregate or any other inorganic or organic solid material capable of creating fugitive dust.

D. "Construction activity" means any activity preparatory to or related to building, altering, rehabilitating, demolishing or improving property that results in a disturbed surface area, including but not limited to grading, excavation, loading, crushing, pavement milling, cutting, clearing, grubbing, topsoil removal, blading, shaping, dry sweeping, blasting and ground breaking.

E. "Crop" means an agricultural plant harvested for consumption, utilization or sale.

F. "Disturbed surface area" or "surface disturbance" means the natural or manmade area of the earth's surface that, as a result of anthropogenic activity, results in a release of fugitive dust or serves as a source of transported material.

G. "Division" means the city of Albuquerque air quality division or its successor agency.

H. "Dust suppressant" means water, hygroscopic materials, or non-toxic chemical stabilizers used to reduce or control fugitive dust emissions.

I. "Earth moving activity" means grading, cutting, filling, soil disturbance (e.g. discing, trenching, blading, scraping, clearing, topsoil removal, grubbing); soil mulching, loading or unloading of dirt or other bulk materials, including adding to or removing from open storage piles of bulk materials.

J. "Fugitive dust" or "dust" means organic or inorganic particulate matter in quantities and of a duration that may with reasonable likelihood injure human or animal health or plant life, reduce safe visibility, cause property damage, or degrade visibility. Water vapor, steam, or particulate matter emissions emanating from a duct or stack of process equipment are not fugitive dust.

K. "Fugitive dust control permit" or "permit" means a permit approved by the department and issued pursuant to this part that contains an approved fugitive dust control plan that allows the beginning of active operations when the permit is signed by an authorized department representative.

L. "Fugitive dust control plan" or "plan" means the portion of the permit application that details any reasonably available control measures and other

effective measures the permit applicant commits to use to reduce the quantity of fugitive dust and transported material leaving the property or area under the control of the permittee in order to prevent a violation of the national ambient air quality standards (NAAQS) and to meet the objective of this part, including contingency fugitive dust control measures that shall be an applicable requirement of any fugitive dust control permit.

M. "High wind event" means a time period of five consecutive minutes with an average wind speed of 30 miles per hour (high wind event threshold level) or higher.

N. "High wind event threshold level" or "threshold level" means a five-minute-averaged wind speed level of 30 miles per hour or more that is used to determine a high wind event.

O. "Inactive disturbed surface area" means any disturbed surface area on which active operations have been suspended.

P. "Large area disturbance" means a project or development, including areas used for storage of bulk material, buildings or construction materials, machinery or vehicles for which active operations have been conducted on more than 25 acres of total land area.

Q. "Open storage pile" means the accumulation of any bulk material that is not fully enclosed, covered or chemically stabilized.

R. "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source that directly or indirectly produces or is capable of producing fugitive dust.

S. "Parking lot" or "parking area" means a location where motor vehicles routinely park whether the area is zoned for parking or not.

T. "Paved" or "paving" or "paved roadway" means asphalt, recycled asphalt, concrete or asphaltic concrete, or combinations thereof, that covers a surface traveled or used by motor vehicles.

U. "Permittee" means any person, owner or operator and all legal heirs, successors, and assigns who has applied for and obtained an approved fugitive dust control permit by the department per this part.

V. "Person" means any individual, firm, partnership, corporation, association, organization, company, joint stock association, business trust, owner, or body politic, including, a municipality, local, state and federal government agency or political subdivision, and shall include any employee, officer, operator, contractor, supplier, installer, user, leaseholder, trustee, receiver, assignee or other person acting in

a similar representative capacity with the authority to control transported material or emissions of particulate matter generated at a disturbed surface area or generated by activities associated with a disturbed surface area.

W. "Privately-owned" means real property that is not wholly or partially owned, leased or otherwise controlled by a federal, state or local government or governmental agency or political subdivision.

X. "Programmatic permit" means a fugitive dust control permit valid for up to five years issued to a permittee that performs routine maintenance or routine ongoing active operations on land or at facilities, which does not include full depth reconstruction of a roadway or substantial removal and replacement of a man-made facility.

Y. "Property line" means the exterior boundary of real property, as indicated by plats, plot maps or other indication of ownership limits.

Z. "Publicly-maintained" means under the jurisdiction of, or maintained by any federal, state, or local government or governmental agency or political subdivision.

AA. "Publicly-owned" means real property that is wholly or partially owned, leased or otherwise controlled by a federal, state or local government or governmental agency or political subdivision. Publicly-owned land includes easements and rights-of-ways, streets, roadways, sidewalks, alleys and other public ways, parks, irrigation and drainage facilities, and any other publicly controlled real property that can be the source of fugitive dust.

BB. "Reasonably available control measure" or "control measures" means any device, system, process modification, apparatus, technique, work practice or control measure, or combination thereof, that mitigates fugitive dust and may be included in this part or any other regulatory control program that affords equivalent protection of a disturbed surface, whether or not the purpose of the control measure is to mitigate dust or to meet some other requirement of this part or any other statute or regulation. Any effective control measures, including those in 20.11.20.23 NMAC may be used.

CC. "Responsible person" or "responsible official" means the person designated in a permit who is responsible for complying with the permit, plan and this part to the extent specified in the permit.

DD. "Short cut" means a roadway used by motor vehicle drivers to save time by avoiding use of a dedicated and authorized roadway.

EE. "Silt" means any bulk material that passes through a 200-mesh screen using the ASTM-C-126 method, or most current ASTM (American society for testing and materials) method. Material that will pass through a 200-mesh screen is 74 microns or less in size.

FF. "Source" or "source of fugitive emissions" means the origin of fugitive dust emissions.

GG. "Stabilized" or "stabilization" means the ongoing practices sufficient to prevent a violation of the national ambient air quality standards by meeting the objective established in Section 20.11.20.6 NMAC of this part.

HH. "Stop work order" means an order issued by the department pursuant to the provisions of this part requiring a person to cease active operations.

II. "Track-out" or "tracking" means bulk material deposited by a motor vehicle or vehicles upon an unpaved or paved publicly or privately owned roadway and that can become airborne due to mechanical or wind action.

JJ. "Transported material" means particulate matter transported by wind, water or other action that, once deposited, can become airborne due to mechanical or wind action.

KK. "Unpaved roadway" means any unpaved route traveled by a motorized vehicle.

LL. "Visible fugitive dust" means anthropogenic particulate matter emissions from a source resulting in particulate matter emissions that can be detected by the human eye or a detection system approved by the department. Visible fugitive dust can be an indicator of PM10.

MM. "Visible fugitive dust detection method" means the method described in Section 20.11.20.25 NMAC of this part, which is one method used to determine compliance with this part. [20.11.20.7 NMAC - Rp, 20 NMAC 11.20.I.7, 3/1/04]

20.11.20.8 VARIANCES: Any person may request a variance from this part in accordance with 74-2-8 NMSA 1978, Variances. The variance procedures of 20.11.7 NMAC shall not apply to this part. [20.11.20.8 NMAC - Rp, 20 NMAC 11.20.I.8, 3/1/04]

20.11.20.9 SAVINGS CLAUSE: Any amendment to Fugitive Dust Control, 20.11.20 NMAC, which is filed with the state records center and archives shall not affect actions pending for violation of a city or county ordinance, or prior versions of 20 NMAC 11.20 and 20.11.20 NMAC, Airborne Particulate Matter, or a permit.

Prosecution for a violation of a prior statute, ordinance, part or permit shall be governed and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.

[20.11.20.9 NMAC - Rp, 20 NMAC 11.20.I.9, 3/1/04]

20.11.20.10 SEVERABILITY: If any section, subsection, sentence, phrase, clause or wording of this part or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of this part.

[20.11.20.10 NMAC - Rp, 20 NMAC 11.20.I.10, 3/1/04]

20.11.20.11 DOCUMENTS: Documents incorporated and cited in this part may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[20.10.20.11 NMAC - Rp, 20 NMAC 11.20.I.11, 3/1/04]

20.11.20.12 GENERAL PROVISIONS:

A. Each person shall use reasonably available control measures or any other effective control measure to prevent a violation of the national ambient air quality standards and meet the objective established in 20.11.20.6 NMAC, whether or not the person has been issued a fugitive dust control permit. No person shall allow fugitive dust, track out, or transported material from any active operation, open storage pile, paved or unpaved roadway or disturbed surface area, or inactive disturbed surface area to be carried beyond the property line, right-of-way, easement or any other area under control of the person generating or allowing the fugitive dust if the fugitive dust will: 1) adversely affect the health, public welfare or safety of the residents of Bernalillo county; or 2) impair visibility or the reasonable use of property; or 3) be visible longer than a total of 15 minutes in any one hour observation period using the visible fugitive dust detection method in 20.11.20.26 NMAC or an equivalent method approved in writing by the department. To mitigate fugitive dust, all inactive disturbed surface areas must be stabilized and maintained in stable condition by the owner, operator, or person responsible for maintenance of the disturbed surface. Failure to comply with this subsection shall be a violation of this part.

B. Failure to comply with a fugitive dust control permit term or condition shall be a violation of this part.

C. The department may be

asked to document and provide any evidence of the alleged property damage caused by fugitive dust and the department may make such documentation available to all parties involved in a property damage dispute. Prior to issuing a permit authorizing commencement of active operations, the department shall document the conditions of the properties that are closest to the property subject to the permit and any other properties the department believes are appropriate. The documentation may be in the form of photographs in electronic or hard copy formats or video recordings. The documentation will be maintained by the department for one year after completion of the permitted project. A condition of any permit issued shall be a requirement to remedy damage to real properties caused by a violation of the permit.

D. A person whose violation of this part results in fugitive dust being deposited upon land beyond the limits of the permitted area shall take all actions necessary to remedy damage caused by a violation proven with credible evidence. Such remedies may include, but not be limited to, compensation, removal of the fugitive dust and/or repair of any damage after obtaining permission from property owners or operators before doing any work on the damaged property. It shall be a separate violation of this part to fail to remove the fugitive dust and repair the damage as specified in the written schedule or any extension agreed to by the person and the damaged property owner. If the parties cannot agree to a schedule, the department may establish deadlines and failure to comply with the deadlines shall be a separate violation of this part. No violation will occur if the failure to perform the corrective action is for reasons beyond the control of the person performing the work including without limitation acts of God or government preemption in connection with a national emergency or if the allegedly damaged property owner refuses to grant reasonable permission and access to conduct the remediation activities.

E. Reserved.

F. Each person must comply with all applicable provisions of the Clean Air Act, the New Mexico Air Quality Control Act, joint air quality control board ordinances, regulations of the board, and permits issued by the department.

[20.11.20.12 NMAC - Rp, 20 NMAC 11.20.II.1, 3/1/04]

20.11.20.13 EXISTING SURFACE DISTURBANCE AREAS; FUGITIVE DUST CONTROL PLANS/PERMIT REQUIRED:

A. Surface disturbance/demolition permits valid at the

time this replacement Part 20 became effective shall remain in effect until the earlier of the expiration date of the surface disturbance/demolition permit or sign-off of the surface disturbance/demolition permit by the department as "project complete." Any renewals, extensions or modifications of existing permits that involve expansion of the disturbed area or modification of the approved plan covered by the existing permit shall comply with the requirements of Part 20, Fugitive Dust Control, including but not limited to payment of the fees required by this part.

B. Any person responsible for sloped (i.e. slopes having a steepness of three-to-one or steeper) and bottom portions of interior and riverside drains and canals used for irrigation purposes, and arroyos and public flood control facilities subject to routine maintenance or repair, sedimentation and water erosion shall apply for a variance, a programmatic permit as authorized by Subsection C of 20.11.20.13 NMAC below, or a large-scale interim status permit set out in Subsection D of 20.11.20.13 NMAC below if the person does not elect to file an application and obtain a new disturbance area permit under 20.11.20.14 NMAC.

C. Programmatic permits covering ongoing routine maintenance of any facilities that exist on the effective date of this part at single or multiple locations may be approved by the department. Programmatic permits are issued to address work activities that result in similar earth moving or surface disturbance activities and utilize similar fugitive dust abatement strategies. Programmatic permits are valid for up to five years and permittee shall pay an annual fee for each year covered by the programmatic permit. Receipt by the department of the annual fees shall result in an automatic renewal of the programmatic permit. A new permit application shall be required every five years or earlier if the surface disturbance activities or fugitive dust abatement strategies are modified. Programmatic permits shall follow the processing requirements of Subsection C or D of 20.11.20.14 NMAC of this part below, as appropriate.

D. Large scale interim status permits shall automatically be granted to all persons who are responsible for, in control of, or have a right of entry pursuant to an easement, permit, license, or right of way for 100 miles or more of unpaved roadways or easements on the effective date of this part and who file a declaration of eligibility within six months of the effective date of this part. A person may withdraw the declaration at any time and terminate all responsibilities under Subsection D of 20.11.20.13 NMAC. If a declaration is

withdrawn, the person withdrawing the declaration shall comply with all other applicable requirements of 20.11.20 NMAC. The person issued a large scale interim status permit shall not be subject to enforcement under this part if the person has filed a declaration of eligibility consistent with this section and, within 90 days of filing the declaration, has paid the applicable programmatic permit fee required by 20.11.2.15 NMAC. The declaration shall include an agreement to the following conditions:

(1) within one year of the effective date of this part, the person shall undertake an inventory of all unpaved roadways and easements and shall submit that report to the department and the board;

(2) within two years of the effective date of this part, the person shall develop a compliance plan with the written approval of the department that sets out a strategy (hereafter "compliance plan") to permanently stabilize the existing unpaved roadways and easements using any reasonably available control measures identified in this part or any other effective control measure that is required under any other statute or regulation, or any other effective control measure devised by the person responsible for these disturbed surfaces;

(3) the compliance plan shall set out a mandatory schedule for permanent stabilization of existing unpaved roads and easements, which shall be completed within no more than 10 years from the effective date of this part;

(4) annual progress reports regarding implementation of the compliance plan shall be submitted to the department and the board documenting the actions taken, due diligence to pursue actions, delays, and explanations of any missed deadlines;

(5) the compliance plan shall be updated annually, and extensions to the approved schedule may be approved by the department. Extensions shall only be granted for a two-year period and only upon a showing of diligent action to achieve compliance; each two-year extension must be applied for separately and only the amount of time necessary to achieve compliance shall be approved by the department if less than a two-year period is required to achieve a mandatory deadline; the department shall grant only three two-year extensions. The board may only grant additional extensions upon a request and public hearing before the board;

(6) if the person fails to comply with this section or upon review of the annual reports and compliance plan updates, the department determines that the person has failed to achieve a reasonable rate of progress based upon diligent actions,

the enforcement provisions of 20.11.20.27 NMAC shall be pursued until reasonable corrective actions are developed to address the failure; if the department accepts the corrective actions a new compliance plan shall be approved by department; and a copy of the new compliance plan and full report shall be made to the board.

E. No signs or photographic documentation shall be required for the permits or activities covered in Section 20.11.20.13 NMAC. Appropriate permit documentation shall be determined by the department.

[20.11.20.13 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.14 NEW SURFACE DISTURBANCE AREAS; FUGITIVE DUST CONTROL PLANS; PERMITS REQUIRED:

A. Any person who does not elect to obtain a fugitive dust control permit pursuant to Section 20.11.20.13 NMAC or who does not qualify for a fugitive dust control permit under Section 20.11.20.13 NMAC and plans to conduct new active operations that will disturb three-quarters of an acre or more must comply with either Subsection C or D of 20.11.20.14 NMAC. Any person may voluntarily apply and pay for a permit pursuant to Subsections C and D of 20.11.20.14 NMAC and shall comply with the requirements of the permit and this part. The application shall include a fugitive dust control plan that may utilize reasonably available control measures to mitigate fugitive dust to meet the objectives of this part. No operations shall commence until an authorized department representative signs the permit. The permit shall consist of the approved permit application form, the fugitive dust control plan, any appended documents, and any conditions attached to the permit by the department.

B. The permittee shall be responsible for complying with the terms of a permit unless the department approves a transfer of the permit or issues a new permit for the active operation to a new permittee. In addition, the department may approve, in writing, an amendment to any permit that adds or changes the designated responsible person who has agreed in writing to be responsible for complying with the permit, to the extent specified in the permit. If the permittee fails to comply with the provisions of this part, the owner or operator, if different from the responsible person or permittee, shall be responsible for compliance with the permit. If a portion of the active operations is legally transferred or sold as a single-occupancy residence lot, the new owner of that lot is responsible for compliance with this part unless exempt,

and the permittee is no longer responsible for control of fugitive dust originating from the residential lot.

C. Any person who plans to conduct active operations that will disturb at least three-quarters of an acre, or 32,670 square feet, but no greater than 25 acres of total land surface shall submit a fugitive dust control permit and fugitive dust control plan application to the department no fewer than 10 working days before beginning active operations. If different from the permittee, the permittee shall designate a responsible person for the permit application and the activities. Before a responsible party may be liable for violations of the permit or this part, the responsible person must agree in writing to accept responsibility for compliance with the permit and this part and shall be the first person contacted by the department to resolve a violation of the permit or this part.

D. Any person who plans to conduct active operations that will disturb more than 25 acres of total land surface shall submit a fugitive dust control permit application to the department regarding the proposed activity no fewer than 20 working days before beginning active operations. If different from the permittee, the permittee shall designate a responsible person for the permit application and the activities. Before a responsible party may be liable for violations of the permit or this part, the responsible person must agree in writing to accept responsibility for compliance with the permit and this part and shall be the first person contacted by the department to resolve a violation of the permit or this part.

E. A fugitive dust control permit application shall be submitted to the department by using permit application forms provided by the department along with any applicable fee. However, the fugitive dust control plan may be in any form including duplicates of programs to comply with any other statute or regulation so long as the plan provides reasonably available control measures whose purpose is to mitigate fugitive dust and meet the objectives of this part. If the plan does not specifically enumerate the control measures proposed to mitigate fugitive dust, the permit application shall be deemed incomplete. Permit applications shall be rejected if incomplete. If an incomplete application is rejected, a new application may be filed and all time limits within this part shall apply as if the initial application had not been filed.

F. When the complete permit application and fee are delivered to the department, the department shall have 10 working days to review the permit application if the area to be permitted is at least three-quarters of an acre but no greater than 25 acres, or the department shall have 20

working days to review the proposed permit if the area to be permitted is greater than 25 acres. If all requirements of this part are met, the department shall issue a permit to the permittee, which shall authorize commencement of active operations. If the department has not approved, denied, or notified the permittee of permit application deficiencies within 30 working days, the permit shall be automatically approved and operations may commence.

G. An approved fugitive dust control permit shall be valid for one year from the date of approval by the department or the project expiration date provided in the permit application, whichever is longer, but no more than five years. If the project plan, expiration date, the total disturbed area(s), or the proposed control measures change in any manner, a new permit shall be required. At least 10 days prior to the expiration date, all fugitive dust control permits must be renewed by the then-current permittee, or the permit shall expire as of the expiration date. permit renewal fees and programmatic permit fees shall be as described in 20.11.2 NMAC. Fugitive dust control permits may be transferred to legal heirs, successors, and assigns, who shall become the new permittee. Permit transfers may be made as an administrative amendment provided that: a copy of a written agreement between the current and new permittee, containing a specific date of transfer of permit responsibility, coverage, and liability, has been submitted to the department, and either the department has determined that no change to the permit other than the administrative change is necessary, or changes to the permit deemed necessary by the department have been made, the new owners have submitted the application information required in Section 20.11.20.15 NMAC of this part, and no grounds exist for permit termination, as otherwise provided by this part.

H. By accepting a permit, the permittee agrees to take all actions required by the fugitive dust control permit issued by the department to prevent a violation of this part, including stopping active operations, if necessary. If the permittee fails to take all required actions, the owner or operator or designated responsible person, if different, shall be responsible to take all actions required to prevent or satisfactorily resolve a violation of this part, including stopping active operations, if necessary.

I. By issuing a stop work order, the department may suspend, and/or may initiate revocation of any permit issued by the department if the permittee fails to implement the reasonably available control measures established in the fugitive dust control permit.

J. By issuing a stop work

order, the department may require any person to stop all active operations at a site if that person fails to obtain a permit as required by this part.

K. For all projects with a valid permit for a total of 10 acres or more, the permittee shall install and maintain a sign provided by the department or that they provide that meets the requirement of this part. The department will establish uniform design guidelines for the sign to ensure that the sign is reasonably legible to the public. If the required information is provided in an existing project sign that has been established for any other purpose, an additional sign shall not be required to comply with this part. At a minimum, the sign shall contain the following:

- (1) project name; and
- (2) permittee name; and
- (3) phone number of designated responsible person or owner; and
- (4) subcontractor name (optional); and
- (5) subcontractor phone number (optional); and
- (6) air quality division phone number; and
- (7) fugitive dust control permit number; and
- (8) project acreage.

[20.11.20.14 NMAC - Rp, 20 NMAC 11.20.11.2 - 9, 3/1/04]

20.11.20.15 FUGITIVE DUST CONTROL PERMITS; MINIMUM REQUIREMENTS: Proposed fugitive dust control permit applications shall be submitted on forms provided by the department. Fugitive dust control plans may be submitted in any format including duplicates of programs required to comply with other statutes or regulations so long as they conform to the information requirements of this part. If extraneous information is supplied that does not apply to mitigation of fugitive dust control, the permit application shall be deemed incomplete. Proposed fugitive dust control permit applications shall include the following:

- A.** permittee, address, telephone number and fax number; and
- B.** owner's name, address, telephone number and fax number if different from permittee; and
- C.** operator's name, address, telephone number and fax number if different from Permittee; and
- D.** if different than the permittee, the name, address, telephone number and fax number of the responsible person or official designated in writing on the permit who is responsible for activities on-site. The department shall first contact the responsible person or official to resolve a violation of this part; and

E. anticipated project start date which must be not fewer than 10 working days from the department's receipt of the permit application for areas containing greater than three quarters of an acre but no greater than 25 acres, nor fewer than 20 working days from the department's receipt of the permit application for areas containing more than 25 acres; and

F. anticipated project end date; and

G. project description; and

H. project location, including:

(1) street address, if available;

and

(2) universal property code, latitude and longitude or universal transverse mercator (UTM) coordinates, if reasonably available; and

I. total area of disturbance in acres or square feet; and

J. the resulting fees due and how they were calculated; and

K. a description of the sequencing of the active operations, if phasing is used to reduce the per acre fees due; and

L. estimated total volume of bulk material being handled (e.g. cubic yards), including any bulk material being imported, exported or relocated; and

M. location from which bulk material is being imported to the site and a statement regarding whether the site where the imported material originates will have a separate fugitive dust control permit, or as soon as known; and

N. location to which bulk material from the site is being exported and a statement regarding whether the site to which the material is to be exported will have a separate fugitive dust control permit, or as soon as known; and

O. whether an approved drainage plan exists pursuant to city of Albuquerque or Bernalillo county ordinances and, upon request by the department, a copy of the drainage plan; and

P. site map (e.g. zone atlas page, aerial photograph); and

Q. type of work being performed and appropriate reasonably available control measures or other effective control measures to be used (see Section 20.11.20.23 NMAC); and

R. a statement that effective contingency fugitive dust control measures shall be taken by the permittee if the control measures in Subsection Q of 20.11.20.15 NMAC are not effective in maintaining compliance with this part; and

S. a commitment to comply with provisions of Subsection B of 20.11.20.16 NMAC if the permittee chooses to preserve the ability to qualify for a

high wind affirmative defense; and

T. high wind contingency measures that will be implemented when high winds occur; and

U. a description of the actions the permittee will take to mitigate damage caused by fugitive dust if generated by the permitted site; and

V. other conditions agreed to by the owner or operator and the department; and

W. signatures of the permittee, and if different, signatures of the owner, operator and/or any designated responsible person or official certifying that the information in the fugitive dust control permit is true, accurate and complete, and certifying that the all actions necessary to comply with this part, including suspending active operations if necessary to comply with the provisions of this part.

[20.11.20.15 NMAC - Rp, 20 NMAC 11.20.11.2 - 9, 3/1/04]

20.11.20.16 HIGH WIND EVENT REQUIREMENT; HIGH WIND EVENT AFFIRMATIVE DEFENSE

A. General requirements: A high wind event is a time period of five consecutive minutes with an average wind speed of 30 miles per hour (high wind event threshold level) or higher. During a high wind event, all persons who own or operate a fugitive dust source where active operations have occurred or are occurring must use reasonably available control measures or other effective measures to prevent fugitive dust from leaving the source, and all persons shall implement control measure in Paragraph (5) of Subsection C, of this section.

B. High wind affirmative defense: If the department initiates an administrative enforcement action against either a permittee or a designated responsible person, or both (respondent) alleging a violation of a permit or this part during a high wind event, the respondent may assert an affirmative defense in the enforcement action if the respondent establishes by credible evidence that respondent complied with the requirements established in Subsection C of 20.11.20.16 NMAC below. In order to successfully assert the affirmative defense, during the entire duration of a permit the respondent shall utilize the applicable controls described in Subsection C of 20.11.20.16 NMAC below, regardless of whether or not a high wind event exists, with the exception of Paragraph (5) of Subsection C of 20.11.20.16 NMAC below, which applies only during a high wind event. The affirmative defense shall not be available if respondent has failed to diligently perform the control measures specified in Paragraphs (1) through (5) of

Subsection C of 20.11.20.16 NMAC. The availability of the affirmative defense shall not change the respondent's potential liability for any damage caused by fugitive dust leaving the permitted property, and the affirmative defense shall not change the permittee's obligation to remove fugitive dust originating from the permitted source, or otherwise remedy the damage, as required by Subsection D of 20.11.20.12 NMAC. The board, its members, and employees and officials of the city of Albuquerque and the county of Bernalillo shall not incur liability for damage to persons or property caused by fugitive dust leaving the permitted property.

C. Mandatory control measures: To assert a high wind event affirmative defense as described in Subsection B of 20.11.20.16 NMAC above, a permittee must utilize the applicable control measures in Paragraphs (1) and (2) of Subsection C of 20.11.20.16 NMAC on an ongoing basis. Without prior notice to the department, the permittee may use measure in Paragraph (3) of Subsection C of 20.11.20.16 NMAC in place of measure in Paragraph (1) of Subsection C of 20.11.20.16 NMAC. After receiving written permission from the department, the permittee may substitute measure in Paragraph (4) for measures in Paragraphs (1), (2), and/or (3) of Subsection C of 20.11.20.16 NMAC. All permittees shall implement measure in Paragraph (5) of Subsection C of 20.11.20.16 NMAC, during a high wind event. The mandatory control measures are described in Paragraphs (1) through (5) of this Subsection.

(1) Use of wet suppression sufficient to provide and maintain a soil moisture content of not less than twelve percent, as used for purposes of determining the optimal compaction rating of the soil. To determine the moisture content, first, scrape away the top one-half to one inch of the soil. The soil sample shall be taken from the freshly scraped area. Soil moisture shall be determined by firmly squeezing by a small handful of sample soil to make an irregular shaped ball of soil. Upon observing the ball and the hand, there shall be credible evidence of the soil binding together with the ball retaining shape due to moisture in the soil. The ball may exhibit some cracking, but shall not collapse due to low moisture content when the hand is opened. The respondent or the department shall test samples obtained from a minimum of three separate representative locations on the permitted property. To demonstrate compliance, at least two-thirds of the samples must exhibit the required moisture content. For additional details regarding the hand test method of determining soil moisture content, use the U. S. Department of Agriculture Natural Resources

Conservation Service's Program Aid Number 1619, *Estimating Soil Moisture by Feel and Appearance* published in 1998. Other similar guides have been published such as the NebGuide G84-690-A published by Norman L. Klocke et al. for the university of Nebraska in 1998. A copy of these guidelines may be obtained from the department. The respondent or the department may also use a reasonably accurate commercially available instrument to determine soil moisture content, including analysis determined with a proctor method. The respondent or the department may contract with a public or private laboratory to perform a proctor or other method. For proctor analyses, either the standard proctor (ASTM D-698) or the modified proctor (ASTM D-1557) may be used. Where possible, methods ft test, ASTM D2922-91 - nuclear density).

(2) Use of properly maintained fabric fencing material around the perimeter of the disturbed surface area with openings no wider than necessary to allow vehicles to enter or exit the area. The fencing material shall be anchored approximately six inches below the surface on the bottom edge, and when installed shall be approximately 24 or more inches high. The fence shall be installed in a durable manner. For example, one durable installation method involves use of steel T-posts spaced approximately eight to 10 feet apart with steel mesh wire used as a reinforcement backing to the fabric. Use of fabric fencing standards associated with the national pollutant discharge system may be approved by the department if they are consistent with the requirements of Paragraph (2) of Subsection C of 20.11.20.16 NMAC. The department may also approve alternative fencing material if it provides equal or better control of fugitive dust. Alternatives may include solid walls or sturdy fences that effectively control fugitive dust. To maintain effectiveness of the fence, fugitive dust that accumulates on either side of the fencing must be removed promptly.

(3) Use of chemical dust suppressants sufficient to substantially reduce fugitive dust leaving the fugitive dust source while active operations are idle, usually used when active operations are suspended for more than 48 hours.

(4) A department-approved alternative dust control measure or measures that provide fugitive dust control that is equal to or better than measures in Paragraphs (1), (2), and/or (3) of Subsection C of 20.11.20.16 NMAC. Before a permittee may substitute an alternative control measure, the department must approve the control measure in writing as a permit amendment.

(5) Stopping active operations

that are capable of producing fugitive dust.

D. Determination of high wind event threshold level (threshold level): The department and the respondent shall use a reasonably accurate recording anemometer to measure the wind speeds in order to determine whether the threshold level has been reached or exceeded. The measurement time period used to determine the threshold level shall be five consecutive minutes. Wind velocity measurements by the department and the respondent shall be taken on the permitted property or within 200 feet of the permitted property being evaluated. Wind measurement results shall be documented, and shall be made available to the permittee and/or person responsible for controlling fugitive dust at the permitted property being inspected.

E. Limitations on use of affirmative defense: A respondent may not assert the affirmative defense described in this section:

(1) against an action for injunctive relief; or

(2) to prohibit the EPA or a citizen's group from taking an enforcement action.

[20.11.20.16 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.17 FILING, PROCESSING AND INSPECTION FEES: Fees required by this part are located in 20.11.02 NMAC.

[20.11.20.17 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.18 FUGITIVE DUST CONTROL PERMIT APPLICATION PROCESSING:

A. Any person required to submit a fugitive dust control permit application for active operations that will disturb at least three-quarters of an acre, but no more than 25 acres shall submit the permit application along with applicable fees to the department no fewer than 10 working days prior to the start of active operations.

B. Any person required to submit a fugitive dust control permit application for active operations that will disturb more than 25 acres shall submit the permit application along with applicable fees to the department no fewer than 20 working days prior to the start of active operations.

C. Within 10 working days of the department receiving the permit application and fees for active operations that will disturb three-quarters of an acre or more, but no more than 25 acres, the department will approve the permit, approve the permit with conditions or deny the permit.

D. Within 20 working days of the department receiving the permit application and fees for active operations

that will disturb more than 25 acres, the department will approve the permit, approve the permit with conditions or deny the permit.

E. If the permit is not issued or denied within the requisite time frames enumerated in Subsections C and D of 20.11.20.18 NMAC, and 30 working days have elapsed from the filing of the permit application, the permit shall be automatically approved and operations may commence.

F. The permittee or designated responsible person or official shall make the permit available to all employees, agents, sub-contractors, and any other person performing work in the area of active disturbance to assist in maintaining compliance with this part. The permittee shall explain the requirements of the permit to appropriate employees, contractors and agents working at the site. The permittee shall provide information to any other interested person in the area as to where they may obtain a copy of the permit from the department.

G. It is the responsibility of the permittee or designated responsible person or official to ensure that the fugitive dust control permit or amended permit contains current contact information and that a copy is maintained at the work site and is provided to the department. Failure to maintain and provide up-to-date contact information shall be a violation of this part.

H. The department may amend the permit when requested to do so by the permittee. No fee shall be charged for amending a permit, unless the amendment increases the number of acres covered by the permit. Both the department and the permittee must sign an amended permit.

I. The department shall implement an electronic filing system using the Internet in order to expedite processing and filing of fugitive dust control permits and plan applications.

[20.11.20.18 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.19 PUBLIC AND PRIVATE UNPAVED ROADWAYS, SHORT-CUTS AND UNPAVED PARKING AREAS:

A. Beginning one year after the effective date of this part, no unpaved roadways greater than one-quarter mile in length and no unpaved parking areas may be constructed or allowed to be constructed or reconstructed on any publicly or privately-owned land, unless the road or parking area is stabilized and maintained consistent with good engineering and maintenance practices. In addition, beginning one year after the effective date of this part, no privately or publicly owned unpaved

short cut of any length may be constructed or be allowed to remain usable when it is evident the short cut is being used by motor vehicle drivers to save time by avoiding use of a dedicated and authorized roadway. A variance from this subsection may be granted by the board in a manner consistent with the variance procedures provided in 74-2-8 NMSA.

B. Owners or operators shall use reasonably available control measures on all unpaved roadways and unpaved parking areas so visible fugitive dust leaving the property is not visible longer than a total of 15 minutes in any 60 minute observation period using visible fugitive dust detection method described in Section 20.11.20.26 NMAC of this part, or an equivalent method approved in writing by the department.

C. Existing public unpaved roadway; complaints. If the department receives a written fugitive dust complaint regarding an existing unpaved public roadway, including any roadways regulated pursuant to Subsection D of 20.11.20.13 NMAC, the department will forward the complaint by certified mail, return receipt requested, to the governmental agency responsible for maintenance of the roadway. Within 45 days from the date the complaint was received by the responsible agency, the responsible agency shall make a reasonable effort to address the complaint, and the governmental agency shall provide the department with a written report of the actions taken to resolve the complaint. Failure of the responsible agency to submit a timely report shall be a violation of this part.

[20.11.20.19 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.20 ABRASIVE PRESSURE BLASTING OPERATIONS: All persons performing abrasive pressure blasting operations shall employ reasonably available control measures or other effective control measures at all times to substantially reduce fugitive dust emissions. Any person conducting abrasive pressure blasting operations is not required to obtain a fugitive dust control permit from the department. Note that stationary source permitting regulations, such as Part 41 and Part 42, may apply to pressure blasting operations.

[20.11.20.20 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.21 MECHANICAL (LEAF) BLOWERS; PROPER USE REQUIRED: Any person using a mechanical blower (e.g. leaf blower) or other device designed to use forced air to move dust or organic material and debris shall

take all reasonable efforts to ensure that leaves, dust and other debris do not remain deposited upon publicly-owned property as the result of the use of the leaf blower or other device. The intent of this requirement is to prevent the dust, material and debris from becoming ground up by abrasive action of tires and then being entrained into the atmosphere as particulate matter.

[20.11.20.21 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.22 DEMOLITION AND RENOVATION ACTIVITIES; PERMIT REQUIRED; ASBESTOS NOTIFICATION REQUIRED: No person shall demolish any building containing over 75,000 cubic feet of space without first obtaining a fugitive dust control permit. All demolition and renovation activities shall employ reasonably available control measures at all times, and, when removing asbestos containing materials (ACM), shall also comply with the federal standards incorporated in 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources. Part 64 requires any person who demolishes or renovates any commercial building, residential building containing five or more dwellings, or a residential structure that will be demolished in order to build a nonresidential structure or building to file an asbestos notification with the department no fewer than 10 days before the start of such activity. Written asbestos notification certifying the presence of ACM is required even if asbestos is not or may not be present in such buildings or structures. Failure to provide proper asbestos notification, or comply with the federal standards incorporated in 20.11.64 NMAC, shall be a violation of the requirements of 20.11.64 NMAC. Knowingly violating provisions of 20.11.64 NMAC is a fourth-degree felony pursuant to the New Mexico Air Quality Control Act, 74-2-14.C.3 NMSA 1978.

[20.11.20.22 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.23 REASONABLY AVAILABLE CONTROL MEASURES FOR FUGITIVE DUST: The permittee may include in the permit application one or more of the reasonably available control measures in this Section or one or more alternative fugitive dust control measures, including measures taken to comply with any other statute or regulation that would effectively control fugitive dust during the active operations or construction activity.

A. Unpaved roadways:

(1) paving using recycled asphalt, asphaltic concrete, concrete, or petroleum products legal for such use;

(2) using dust suppressants

applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;

(3) using wet suppression; or

(4) using traffic controls, including decreased speed limits with appropriate enforcement; other traffic calming methods, vehicle access restrictions and controls; road closures or barricades; and off-road vehicle access controls and closures.

B. Paved roadways:

(1) cleaning up spillage and track out as necessary to prevent pulverized particulates from being entrained into the atmosphere;

(2) using paved or gravel entry/exit aprons with devices, such as steel grates, capable of knocking mud and bulk material off vehicle tires;

(3) using on-site wheel washes; or

(4) performing regularly scheduled vacuum street cleaning or wet sweeping with a sweeper certified by the manufacturer to be efficient at removing particulate matter having an aerodynamic diameter of less than 10 microns (i.e. PM10).

C. Trucks hauling bulk materials on public and private roadways:

(1) using properly secured tarps or cargo covering that covers the entire surface area of the load;

(2) preventing leakage from the truck bed, sideboards, tailgate, or bottom dump gate;

(3) using wet suppression to increase moisture content of the bulk materials being hauled;

(4) using dust suppressants applied in amounts and rates recommended by the manufacturer; or

(5) maintaining a minimum of six inches of freeboard from the rim of the truck bed. Freeboard means the vertical distance from the highest portion of the load abutting the bed and the lowest part of the top rim of the truck bed.

D. Active operations in construction areas and other land disturbances:

(1) Short term control measures may include:

(a) wet suppression;

(b) dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;

(c) temporary upwind windbreaks, including fabric fences where the top is at least four feet above grade, and with the bottom of the fence sufficiently anchored to the ground to prevent material from blowing underneath the fence; all windbreaks and fabric fences should be maintained in an upright and functional condition at all times until no longer needed

to prevent or abate fugitive dust; all accumulated material on the windward side of the windbreak should be periodically removed to prevent failure of the windbreak;

(d) watering the site at the end of each workday sufficient to stabilize the work area;

(e) applying dust suppressants in amounts and rates recommended by the manufacturer on the worksite at the end of each workweek if no active operations are going to take place over the weekend or if active operations stop for more than two consecutive days;

(f) starting construction at the location that is upwind from the prevailing wind direction and stabilizing disturbed areas before disturbing additional areas;

(g) stopping active operations during high wind; or

(h) clean up and removal of track-out material.

(2) Long term control measures should include:

(a) site stabilization using dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;

(b) reseeding using native grasses as specified in this part;

(c) xeriscaping;

(d) installing parallel rows of fabric fencing or other windbreaks set perpendicular to the prevailing wind direction either onsite or on a nearby property with the permission of the nearby property owner;

(e) surfacing with gravel or other mulch material of a size and density sufficient to prevent surface material from becoming airborne;

(f) mulching and crimping of straw or hay as specified in Section 20.11.20.27 NMAC of this part;

(g) installing permanent perimeter and interior walls;

(h) conventional landscaping techniques; or

(i) clean up and removal of track-out material.

E. Bulk material handling:

(1) using spray bars;

(2) applying wetting agents (surfactants) to bulk material;

(3) using wet suppression through manual or mechanical application;

(4) adding dust suppressants to bulk materials in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;

(5) stopping bulk material handling, processing, loading or unloading dur-

ing high wind conditions;

(6) reducing process speeds; or

(7) reducing drop heights.

F. Industrial sites:

(1) paving roadways and parking area with recycled asphalt, asphaltic concrete, concrete, or petroleum products legal for use;

(2) performing regularly scheduled vacuum street cleaning or wet sweeping;

(3) regularly using wet suppression on unpaved areas;

(4) using dust suppressants applied in amounts and rates recommended by the manufacturer, and maintained as recommended by the manufacturer;

(5) installing wind breaks;

(6) installing enclosures;

(7) installing on-site anemometers to measure wind speed; the anemometer should trigger a suitable warning mechanism such as a strobe light or audible alarm (that will not violate any applicable noise ordinance) to notify on-site personnel of high wind conditions;

(8) increasing wet suppression applications before and during high wind conditions; or

(9) stopping active operations during high wind conditions.

G. Demolition and renovation activities when asbestos-containing materials are not present:

(1) using constant wet suppression on the debris piles during demolition;

(2) using water or dust suppressants on the debris pile, applied in amounts and rates recommended by the manufacturer;

(3) using enclosures;

(4) using curtains or shrouds;

(5) using negative pressure dust collectors; or

(6) stopping demolition during high wind conditions.

H. Milling, grinding or cutting of paved or concrete surfaces:

(1) constantly using wet suppression;

(2) ongoing clean up of milled, ground or cut material by using wet sweeping;

(3) using dust suppressants applied in amounts and rates recommended by the manufacturer, and maintained as recommended by the manufacturer;

(4) using enclosures; or

(5) using curtains or shrouds.

I. Pressure blasting operations:

(1) using non-friable abrasive material;

(2) using curtains, enclosures or shrouds;

(3) using negative pressure dust

collectors;

(4) using constant wet suppression;

(5) maintaining ongoing clean up of abrasive material; or

(6) stopping active operations during high wind conditions.

J. Spray painting and other coatings:

(1) using enclosures that comply with applicable fire codes; or

(2) using curtains, enclosures or shrouds.

K. High wind contingency measures:

(1) installing and using on-site anemometers to measure wind speed; the anemometer should trigger a suitable warning mechanism such as a strobe light or audible alarm (that will not violate any applicable noise ordinance) to notify site personnel of high wind conditions;

(2) using constant wet suppression;

(3) using dust suppressants applied in amounts and rates recommended by the manufacturer;

(4) using wetting agents or surfactants on disturbed areas, bulk materials or stockpiles;

(5) slowing down process; or

(6) shutting down active operations.

[20.11.20.23 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.24 NATIVE GRASS SEEDING AND MULCH SPECIFICATIONS:

A. If the fugitive dust control permit includes provisions to revegetate a disturbed area, the permittee can choose to use the following specifications. Because these specifications have provided reasonably successful results in the past in Bernalillo county, they are included here as a reference for permittees and others choosing to use native revegetation as a long-term reasonably available control measure. However, use of these specifications does not guarantee success.

(1) The **native seed** species used and rate of application should be as shown in Subsection F of Section 20.11.20.24 NMAC.

(a) If the area to be seeded is along a recreational trail of any type, the seed mixes for either type of soil listed in Subsection F of this section should not include four-wing saltbush and the seeding rate should be reduced by one pound per acre.

(b) **Seeds may be pre-mixed by a seed dealer.** Each pre-mixed bag of seed should be sealed and labeled by the seed dealer in accordance with federal seed laws

and New Mexico department of agriculture labeling laws. The label should include: variety, kind of seed, lot number, purity, germination, percent crop, percent inert, percent weed (including noxious weeds), origin, test data and net weight. Federal seed laws require that analysis shall be no older than five months for seed shipped interstate and no older than nine months for seed shipped intra-state.

(c) **48 hours before seeding**, the owner or operator should give written notice to the department by hand delivery or facsimile, requesting inspection of the sealed seed bags to be used. The department may inspect the sealed seed bags and labels.

(2) **Fertilizer and soil amendments**: Unless otherwise specified in the fugitive dust control permit, no fertilizer or other soil amendments are required on areas to be reseeded.

(3) **Mulch**: Areas to be reseeded should be mulched as described below unless otherwise specified in the permit.

(a) **Hay mulch**: Perennial native or introduced grasses of fine-stemmed varieties should be used unless otherwise specified in the plan. At least 65 percent of the herbage by weight of each bale of hay should be 10 inches in length or longer. Hay with noxious seed or plants should not be used. Rotted, brittle, or moldy hay are not considered acceptable. Marsh grass or prairie hay composed of native grass of species to be seeded is considered acceptable. Tall wheat grass, intermediate wheat grass, switch grass, or orchard hay will be acceptable if cut prior to seed formation. Marsh grass hay should be composed of mid and tall native, usually tough and wiry grass and grass-like plants found in the lowland areas within the Rocky Mountain region. Hay should be properly cured prior to use. Hay that is brittle, short fibered or improperly cured is not considered acceptable. Hay mulch should be crosshatched crimped to minimum depth of two inches.

(b) **Straw mulch**: Small grain plants such as wheat, barley, rye, or oats should not be used. Alfalfa or the stalks of corn, maize or sorghum are not considered acceptable. Material which is brittle, shorter than 10 inches or which breaks or fragments during the crimping operation are not considered acceptable. Straw mulch should be crosshatched crimped to minimum depth of two inches.

(c) **Gravel mulch**: Gravel mulch should be a maximum of three-quarter to one inch in diameter and must have been crushed or screened with a minimum of one angular face. Experience has demonstrated that gravel mulch provides very successful results on steep slopes and other areas that may be difficult to stabilize.

(d) **Erosion control mats, fabric or blankets**: The type of erosion control mats, fabric or blankets used should be specified in the fugitive dust control permit.

B. Seed bed preparation:

(1) Prior to starting seed bed preparation, the final grades of all earthwork should be inspected and certified by a New Mexico licensed engineer, and a copy of the certification should be delivered to the department:

(a) no soil preparation should be performed when the surface is wet or muddy or when the soil is so moist that the soil is not fully loosened by the discing operation;

(b) if erosion, crusting or re-compaction occurs in an area before seeding, mulching and crimping are successfully completed, the area should be reworked, beginning with seedbed preparation.

(2) **Mechanical preparation:**

The seedbed should be loosened to a minimum depth of six inches by disc or harrow. Areas of heavy or compacted soil may require additional preparation by chiseling or ripping if discing alone does not result in preparation to the full minimum depth of six inches. The soil should be worked to a smooth surface and should be free of clods, stones four inches in diameter and larger, and debris or foreign material that could interfere with seeding or crimping operations.

(3) **Hand preparation**: Areas which cannot be prepared with mechanized equipment because of small size, irregular shape or slope may be prepared to a minimum depth of two inches using hand tools or a rototiller, as specified in the permit.

C. Seeding:

(1) Should not start until the seed bed preparation has been inspected and certified by a New Mexico licensed engineer, a New Mexico licensed landscape architect, or other professional approved by the department (e.g. a department certified erosion control specialist). Notice in writing or by facsimile providing certification pertaining to the seed bed preparation should be given to the department at least 48 hours prior to beginning seeding operations so that the department has an opportunity to inspect the site. No seeding operations should be conducted when steady wind speeds exceed 10 miles per hour.

(2) **Seed application:**

(a) **Drill seeding**: Drill seeding is highly recommended. Seed should be applied with a "rangeland" type seed drill equipped with packer wheels. Seed should be drilled to a maximum depth of one-half inch. Direction of seeding should be across slopes and on the contour whenever possible.

(b) **Broadcast seeding**: Seed

may be applied using the broadcast method when size, irregular shape, or slope exceeding three to one, prevents the use of a seed drill. Seed may be broadcast by hand or by a mechanical seeder provided that the seed is evenly distributed over the seeding area. Areas that are broadcast seeded should be seeded at a rate that is double the rate used for drill seeding. Areas of broadcast seeding should be hand raked to cover seed.

(c) **Seeding with gravel mulch:**

Areas to be gravel mulched should be seeded at double the standard seed rate with one-half the seed applied prior to application of gravel and one-half of the seed applied on the surface of the gravel. Water should be applied in a quantity sufficient to wash seed from the surface and into the gravel.

(d) **Hydro seeding**: Hydro seeding with native grass will normally only be successful on areas that will be irrigated.

D. Hay or straw mulching:

(1) All seeded areas should be mulched unless otherwise specified in the fugitive dust control permit. On seeded areas that are level or have slopes that are a ratio of three to one or less, any of the four types of mulching below may be used. On erosion control areas or slopes steeper than a ratio of three to one, only gravel mulch or erosion control materials should be used.

(2) **Hay mulch** should be applied at a minimum rate of one and one-half tons per acre of air dry hay.

(3) **Straw mulch** should be applied at a minimum rate of two and one-half tons per acre of air dry straw.

(4) Hay or straw mulch should be crosshatched crimped into the soil to a minimum depth of two inches.

(a) The mulch should be spread uniformly over the area either by hand or with a mechanical mulch spreader.

(b) When spread by hand, the bales of mulch should be torn apart and fluffed before spreading.

(c) Mulching should stop when wind speeds exceed 15 miles per hour.

(d) The mulch should be wetted down and allowed to soften for approximately 15 to 20 minutes prior to crimping.

(e) A heavy disc should be used to crimp or anchor the mulch into the soil to a minimum depth of two inches. A mulch-tiller with flat serrated discs at least one-quarter of an inch in thickness, having dull edges with discs spaced six inches to eight inches apart or similar equipment should be used. The discs should be of sufficient diameter to prevent the frame of the equipment from dragging the mulch.

(f) The crimping operations should be across the slope where practical, but not parallel to prevailing winds. In general, crimping should be in a north-south

direction or in tight interlocking "S" curves to avoid straight east-west crimp lines.

(g) If small grain straw mulch is used, the mulch should be crimped in two directions in a cross-hatch pattern.

(5) **Gravel mulch:** Gravel mulch should be laid evenly by hand or by equipment to a thickness of two inches.

(6) **Erosion control mats, fabric or blankets:** The type of erosion control mats, fabric or blankets used should be as specified in the fugitive dust control permit. Anchoring of the erosion control materials should be consistent with the manufacturer's recommendations.

(7) Upon completion of the reseeding project, the permittee should deliver written notice to the department in a timely manner, certifying completion of seeding project.

E. Protection of native grass seeded area: If the person, owner or operator has elected to use native seeding as a control measure, they shall be responsible for protecting and caring for the seeded area until plants are fully established. After project completion, the owner or operator may need to repair any damage to seeded areas caused by pedestrian or vehicular traffic or vandalism. During periods of low rainfall, supplemental watering may be a way to improve success in establishing the native grass seed. Because the owner is responsible for the fugitive emissions leaving the property, failure of the reseeding project shall not be a defense to enforcement of this part. The owner or operator may find it necessary to reseed or use other reasonably available control measures to bring the property into compliance. The department strongly recommends that any area being seeded or mulched be adequately fenced and posted to prevent trespass traffic.

F. Seed specifications and rates as established by the "City of Albuquerque Standard Specifications for Public Works Construction - 1986, Section 1012, Native Grass Seeding" as updated or as approved in writing by the department

G. Variations in seeding due to special environmental conditions: The owner or operator may use a different seeding mixture in order to address special environmental conditions that make it unlikely for success of the reseeding effort. Use of an annual rye (*Lolium sp.*) or cool season grasses (e.g. barley at 10 pounds per acre) may be added to the seed specification in order to help stabilize soils, especially for disturbed areas comprising 25 acres or more when a significant amount of the land area is not expected to be built upon within one year.

[20.11.20.24 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.25 REVIEW MEETING, HEARING ON THE MERITS REGARDING PERMIT APPLICATIONS AND PERMITS:

A. If a permit applicant is adversely affected by, or disagrees with the division's proposed decision regarding the applicant's permit application, the applicant may request an informal review meeting to discuss the division's proposed decision. The request shall be in writing or on a form provided by the division. Within 15 working days of the applicant receiving the proposed decision, the applicant shall deliver the request to the director and the division manager. Unless the director receives a timely request for an informal review meeting, the division's proposed decision regarding the permit application shall be final. Within 10 working days after receiving the request, the director shall hold an informal review meeting with the applicant and a division representative (e.g. division manager or the person issuing the proposed decision regarding the permit application) in an attempt to resolve disagreements. Within two working days after the informal review meeting, the division representative shall issue a final decision regarding the permit application. If the permit applicant or permittee is adversely affected by the final decision made by the division representative, the permit applicant or permittee may follow the procedures described in the following subsection.

B. A person adversely affected by the decision of the division regarding a permit application or permit ("petitioner") may file a petition for a hearing on the merits before the board. The petition shall be in writing, addressed to the board and be delivered to the director no later than 30 consecutive days after the later of: 1) the decision of the division regarding the proposed application, if no timely request has been made for an informal review meeting; or 2) the final decision of the division representative following an informal review meeting. Unless the director receives a timely petition for a hearing on the merits, the decision of the division regarding the permit application or permit shall be final.

C. If a timely petition for a hearing on the merits is received by the director, the board shall hold a hearing on the merits within 60 consecutive days after the director receives the petition. No fewer than 21 consecutive days before the start of the hearing, the board shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time and place of the hearing by certified mail. If the subject of the petition is a permitting action deemed by the board to substantially affect the public interest, the board shall

cause the notice of the date, time and place of the hearing to be published. In such circumstances, the public shall also be given reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

D. The board may designate a hearing officer to take evidence in the hearing and recommend a decision to the board. All hearings shall be recorded.

E. The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, within 30 consecutive days of the close of the hearing, the board shall sustain, modify, or reverse the decision of the division regarding the permit application or permit. The decision of the board shall be final and may be appealed consistent with 74-2-9 NMSA.

[20.11.20.25 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.26 VISUAL DETERMINATION OF FUGITIVE DUST EMISSIONS VIOLATIONS:

The following method, hereafter called the "visible fugitive dust detection method", is used to visually determine the total amount of time that fugitive dust emissions are visible during a one-hour observation period. If a trained department observer records visible fugitive dust leaving the property being investigated for a total of 15 minutes or more during a one-hour period, a violation of this part has occurred. The observer does not have to be certified in procedures found in 40 CFR 60, Method 9, *Visual Determination of the Opacity of Emissions From Stationary Sources* (EPA Method 9). However, the observer must receive adequate training to properly identify a violation of this part that is caused by anthropogenic activities and to distinguish dust that emanates from a non-regulated source and be certified by the department as a trained observer. The following method does not require the opacity of emissions to be determined during the observation period, but determines the total amount of time in a one-hour period during which visible dust emissions are observed leaving a property line.

A. To properly perform this method, the observer shall use two stopwatches. One stopwatch shall be used to record the continuous one-hour time period during which the observations are conducted. This period shall be known as the "observation period." The second stopwatch will be used to record total accumulated amount of time that emissions are visible during the observation period. The second stopwatch shall establish the "visible fugitive dust emission time".

B. Prior to the observation, the observer shall determine the location of potential fugitive dust source(s) and the location of the downwind property line for the source. The observer shall sketch the location of the fugitive dust source(s), and when feasible, record the observer's location on a copy of the fugitive dust control permit map or aerial photograph; and sketch or photograph the location of the downwind property line and physical features that help define the property line; and sketch or photograph the observer's location during the observations; and sketch the position of the sun relative to the observer. The observer shall document that the observed fugitive dust is not originating from an upwind source other than the source being evaluated. The observer must be at least 15 feet away from the visible fugitive dust emissions, and not more than one-quarter mile away.

C. The observer shall record:

- (1) observer's name and affiliation; and
- (2) date of observation; and
- (3) company name, property owner or operators, if known; and
- (4) description of the fugitive dust sources; and
- (5) wind speed and direction (explain method of determining the wind speed, i.e., hand-held anemometer; and
- (6) sky conditions.

D. At the beginning of the observation period, the observer shall record the time of day when the observation begins. The observer shall start the first stopwatch to begin recording the observation period and shall observe along the property line. With the second stopwatch, the observer shall record the length of time dust emissions are visible leaving the property line. The observer shall stop the second stopwatch when the visible dust emissions stop. The observer shall continue this procedure during the observation period or until the total visible fugitive dust emission time establishes a violation of this part. The observer shall record the actual time of day when the observations ended.

E. Observer breaks: The observer may take a break periodically, but for no more than 15 minutes. During the break, the observer shall stop the both stopwatches and shall record the actual time of day from the start to the end of the break. [20.11.20.26 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.27 ENFORCEMENT:

A. It is the responsibility of all persons to whom this part applies to use control measures that are effective in maintaining compliance with this part. If a

violation occurs or is occurring, the department may issue a verbal warning, issue a written warning, require a violator to pay an administrative penalty, and may take all other actions authorized by law and equity, including issuing a stop work order as authorized by this part.

B. If the department determines a person has violated or is violating a requirement or prohibition of this part, the department may initiate an administrative enforcement action and assess an administrative penalty for a past or current violation, or both, as authorized by 74-2-12 NMSA. As also authorized by 74-2-12 NMSA and 74-2-12.1 NMSA, the department may commence a civil action in New Mexico district court for appropriate relief, including a temporary or permanent injunction. In addition, as authorized by 74-2-14 NMSA, the department also may commence or cause a criminal action to be commenced. Violation of a fugitive dust control permit or fugitive dust control plan approved by the department is a violation of this part.

C. As authorized by 74-2-12 NMSA, in connection with an administrative enforcement action, the Director may issue subpoenas for attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

D. If a person receives a notice of a proposed administrative enforcement action from the division, that person ("requestor") may request an informal review meeting to discuss the division's proposed administrative enforcement action. The request shall be in writing or on a form provided by the division. Within five working days after the requestor has received the proposed administrative enforcement action, the requestor shall deliver the request to the director and the division manager. Within five working days of receiving the request, the division manager shall hold an informal review meeting with the requestor and a division representative (e.g. division manager, compliance officer, or person issuing the action) in an attempt to resolve the administrative enforcement action. Within two working days after the informal review meeting, the division representative shall issue a final decision regarding the action. If the requestor is adversely affected by the final decision made by the division representative, the requestor may follow the procedures described in the following subsection.

E. A person who receives a proposed administrative enforcement action and chooses not to sign the compliance agreement or similar document proposed by the division and comply with its terms may request a hearing consistent with

74-2-12 NMSA. The decision following the hearing may be appealed consistent with 74-2-9 NMSA.

F. Payment of an administrative penalty authorized by this part shall not prevent the department from taking additional enforcement actions, including suspension or revocation of a permit, if the violation is repeated or an additional violation occurs. Payment of an administrative penalty for a prior or another violation shall not be a defense to any additional action taken by the department to resolve a violation. Actions by the department may include suspension or revocation of a permit, as provided by 72-2-12 NMSA, and issuance of a stop work order.

G. The department may issue a stop work order, which shall be effective 24 hours after the person, permittee, owner, operator, or responsible person or official named in a valid permit receives the stop work order, unless an earlier deadline for stopping work or other activities is imposed by the department for good reason. The stop work order shall remain in effect until the person, permittee, owner, operator, or responsible person or official named in a valid permit demonstrates to the satisfaction of the department that the property and activities of the person, permittee, owner, operator or responsible person or official named in a valid permit shall comply with the provisions of this part.

[20.11.20.27 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.28 PUBLIC OUT-REACH AND TRAINING: The department shall provide or approve public education regarding reducing fugitive dust, and the department shall implement a program to provide training at no cost to individuals who are or may in the future be required to comply with provisions of this part. Approximately twice per year, the department shall provide or approve training workshops on fugitive dust and its control to persons who conduct or participate in projects involving active operations or any other interested person. When a person attends the training and successfully passes a test, the department or approved trainer shall certify that the person has successfully completed the training and provide documentation that the person is certified. Certifications shall be valid for two years. [20.11.20.28 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.29 COMPLAINTS: The department shall respond to complaints from residents, businesses and others in a timely manner, but in no case shall the initial response be made in less than 30 days. [20.11.20.29 NMAC - Rp, 20 NMAC 11.20.

II.2 - 9, 3/1/04]

HISTORY OF 20.11.20 NMAC:

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

Regulation No. 8, Airborne Particulate Matter, filed 3/24/82.

Regulation No. 8, Airborne Particulate Matter, filed 2/17/83.

History of Repealed Material: 20 NMAC 11.20, Airborne Particulate Matter (filed 5/29/96); repealed 3/1/04.

Other History: Regulation No. 8, Airborne Particulate Matter; filed 2/17/83 was renumbered and reformatted into first version of the New Mexico Administrative Code as 20 NMAC 11.20, Airborne Particulate Matter, effective 12/01/95.

20 NMAC 11.20, Airborne Particulate Matter, filed 10/27/95 replaced by 20 NMAC 11.20, Airborne Particulate Matter, effective 07/01/96.

20 NMAC 11.20, Airborne Particulate Matter, filed 5/29/96 renumbered, reformatted and replaced by 20.11.20 NMAC, Fugitive Dust Control, effective 3/1/04.

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.2 NMAC, Sections 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, effective 3/1/04 and Part name.

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD PART 2 ~~[PERMIT]~~ FEES

20.11.2.2 SCOPE:

A. Applicability:

(1) any person required to obtain a permit pursuant to 20.11.42 NMAC [~~Operating Permits~~];

(2) any person required to obtain a permit pursuant to 20.11.41 NMAC [~~Authority to Construct~~];

(3) any person with a valid registration or permit issued pursuant to 20.11.40 NMAC [~~Source Registration~~], 20.11.41 NMAC [~~Authority to Construct~~], or 20.11.42 NMAC [~~Operating Permits~~];

(4) any person [~~requesting~~] required to obtain a [~~Surface Disturbance~~] fugitive dust control permit pursuant to

20.11.20 NMAC, [~~Airborne Particulate Matter~~] Fugitive Dust Control;

(5) any person required to provide notification regarding removing regulated asbestos containing material pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources; [~~and~~]

(6) any person requesting professional or administrative services, or copies of public records; and

(7) any person who requests a variance or a hearing before the board.

B. Exempt: [~~This Part~~]

20.11.2 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque/Bernalillo county air quality control board lacks jurisdiction.

C. Variance: Any person may request a timely variance [~~to this Part~~] from the requirements of 20.11.2 NMAC in accordance with Variance Procedures, 20.11.7 NMAC, if allowed by federal, state or local laws and regulations.

[20.11.2.2 NMAC - Rp, 20 NMAC 11.02.1.2 & 20 NMAC 11.02.1.8, 7/1/2001; A, 3/1/04]

20.11.2.3 S T A T U T O R Y AUTHORITY: [~~This Part~~] 20.11.2 NMAC

is adopted pursuant to the authority provided in the New Mexico Air Quality Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 and 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-3 and Section 9-5-1-4.

[20.11.2.3 NMAC - Rp, 20 NMAC 11.02.1.3, 7/1/2001; A, 3/1/04]

20.11.2.6 OBJECTIVE:

A. To implement the requirements of 74-2-7 NMSA by establishing:

(1) reasonable fees to cover the cost of reviewing and acting on any permit application received by the Department;

(2) reasonable fees to cover the cost of implementing and enforcing the terms and conditions of any permit issued by the department; and

(3) a schedule of operating permit fees consistent with Section 502(b)(3) of Clean Air Act and the joint air quality control board ordinances.

B. To establish reasonable fees to cover the cost of variance procedures and permit-related administrative hearings before the board;

[B] C. To implement the requirements of Section 507 of federal Clean Air Act by establishing adequate funding for a small business stationary

source technical and environmental compliance assistance program; [~~and~~]

[E] D. To establish reasonable fees to cover the administrative expenses incurred by the department in implementing and enforcing the provisions of the New Mexico Air Quality Control Act, the joint air quality control board ordinances, and the Albuquerque/Bernalillo county air quality control board regulations; and

[D] E. [~~This Part~~] 20.11.2 NMAC is permanent. A financial audit of the division shall be performed for city of Albuquerque fiscal year 2005 (July 1, 2004 through June 30, 2005). The results of the audit shall be reported to the air board during city fiscal year 2006.

[20.11.2.6 NMAC - Rp, 20 NMAC 11.02.1.6, 7/1/2001; A, 3/1/04]

20.11.2.7 DEFINITIONS:

Throughout [~~this Part~~] 20.11.2 NMAC, the terms defined shall have the following meanings. For the purpose of [~~this Part~~] 20.11.2 NMAC, if there is any apparent conflict between the meaning of a definition in [~~this Part~~] 20.11.2 NMAC and a definition in another part, the definition in [~~this Part~~] 20.11.2 NMAC shall prevail and apply.

A. "Allowable emission rate" means the most stringent emission limit that has been established by a permit issued by the department or the source's potential-to-emit.

B. "Efficiency control factor" means a factor used in conjunction with a fugitive dust source classification to determine the annual fee per acre to be paid for a programmatic permit issued pursuant to 20.11.20 NMAC. The four fugitive dust source classifications pertaining to programmatic permits are "no impact source", "low impact source", "moderate impact source" and "high impact source" which are defined in 20.11.2.7 NMAC.

[B] C. "Emissions unit" means any part or activity of a stationary or portable source that emits or has the potential to emit any fee pollutant.

[E] D. "Fee pollutant" means:

- (1) sulfur dioxide (SO_x);
- (2) nitrogen dioxide based on total oxides of nitrogen (NO_x);
- (3) carbon monoxide (CO);
- (4) particulate matter with an aerodynamic diameter less than or equal to 30 micrometers (TSP);

(5) any volatile organic compound as defined in 40 CFR 51.100(s), as amended;

(6) any hazardous air pollutant listed pursuant to 112(b) of the federal Clean Air Act; [~~and~~]

(7) any regulated substance listed

pursuant to Section 112(r) of the federal Clean Air Act; and

(8) any other pollutant determined by the board after public hearing.

[D] E. “Fugitive emissions” means ~~those~~ emissions that cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

F. “High impact source” means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 10 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a high impact source based on professional judgment, sound technical information, or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. The purpose of classifying a fugitive dust source as a high impact source is so the programmatic permit fees can be calculated for a programmatic permit issued pursuant to 20.11.20 NMAC. For a high impact source, the applicable efficiency factor for calculating fees shall be 0.9.

G. “Low impact source” means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 90 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a low impact source based on professional judgment, sound technical information, or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. The purpose of classifying a fugitive dust source as a low impact source is so the programmatic permit fees can be calculated for a programmatic permit issued pursuant to 20.11.20 NMAC. For a low impact source, the applicable efficiency factor for calculating fees shall be 0.1.

[E] H. “Major source” shall have the meaning defined in 40 CFR 71.2.

I. “Moderate impact source” means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strate-

gies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 50 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a moderate impact source based on professional judgment, sound technical information, or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. The purpose of classifying a fugitive dust source as a moderate impact source is so the programmatic permit fees can be calculated for a programmatic permit issued pursuant to 20.11.20 NMAC. For a moderate impact source, the applicable efficiency factor for calculating fees shall be 0.5.

J. “No impact source” means a fugitive dust source to which a control strategy or combination of strategies has been applied, which strategies, when applied to an entire source or a portion of a source, can reasonably be expected to reduce fugitive dust leaving the source by approximately 100 percent compared to the level of fugitive dust leaving the source that would be expected if no control strategy or strategies were in place. The department shall determine the classification of fugitive dust source as a no impact source based on professional judgment, sound technical information, or scientific evidence. The department shall provide a written explanation of the basis for making the determination of the classification if requested by the programmatic permit applicant. Land that is classified as a no impact source is not required to obtain a programmatic permit issued under 20.11.20 NMAC and is not required to pay a programmatic permit fee for land classified as a no impact source.

[F] K. “Potential-to-emit” or “PTE” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of source to emit an air pollutant, including air pollution control equipment, restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if integral to the process or the limitation is federally enforceable through permit or regulation. Any limitation on emissions due to process design must be unchanging and unavoidable physical constraints. The potential-to-emit for nitrogen oxide shall be based on total oxides of nitrogen.

[G] L. “Qualified small busi-

ness” means:

(1) a business that has 100 or fewer employees;

(2) ~~[H]~~ a small business concern as defined by the federal Small Business Act;

(3) a source that does not emit more than 50 tons per year of any regulated air pollutant, or 75 tons per year of all regulated air pollutants; and

(4) a facility that is not a major source of hazardous air pollutants.

[H] M. “Regulated air pollutant” means the following:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

(2) any pollutant for which a national, state or local ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard established in Section 111 of the federal Act;

(4) any Class I or II substance subject to any standard established in Title VI of the federal Act; or

(5) any pollutant subject to a standards or requirements established in Section 112 of the federal Act, including:

(a) any pollutant subject to requirements under Section 112(j) of the federal Act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal Act have been met, but only with respect to the individual source subject to the requirements.

[H] N. “State air toxic review” means a case-by-case permit application review of the potential emissions of toxic air pollutants listed in 20.2.72 NMAC, Construction Permits, ~~[Subsection IV Permits for Toxic Air Pollutant Emissions]~~ Section 20.2.72.502 NMAC, Toxic Air Pollutants and Emissions.

[H] O. “Stationary source with de minimis emissions” means a source as defined in 20.11.41 NMAC, ~~;~~ unless otherwise regulated, with a potential-to-emit:

~~(1) Less than 5 tons per year of any regulated air pollutant, excluding hazardous air pollutants;~~

~~(2) Less than 2 tons per year of any hazardous air pollutant;~~

~~(3) 5 tons or less of any combination of hazardous air pollutants per year; or~~

~~(4) 20 percent of any lesser threshold per year for a single hazardous air pollutant established by the Environmental Protection Agency by rule.]~~

[20.11.2.7 NMAC - Rp, 20 NMAC 11.02.1.7, 7/1/2001; A, 3/1/04]

20.11.2.9 SEVERABILITY: If any section, paragraph, sentence, clause or

word of [~~this Part~~] 20.11.2 NMAC or federal, state or local standard incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of the remaining provisions of [~~this Part~~] 20.11.2 NMAC.

[20.11.2.9 NMAC - Rp, 20 NMAC 11.02.1.10, 7/1/2001; A, 3/1/04]

20.11.2.10 DOCUMENTS :

Documents cited and incorporated in [~~this Part~~] 20.11.2 NMAC may be viewed at the Albuquerque environmental health department, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102.

[20.11.2.10 NMAC - Rp, 20 NMAC 11.02.1.11, 7/1/2001; A, 3/1/04]

20.11.2.11 GENERAL PROVISIONS:

A. At the time of application, any person, including a federal, state or local governmental agency, who files an application pursuant to 20.11.41 NMAC [~~Authority to Construct~~] for an initial air quality application review and authority to proceed with construction or any person requesting to modify an existing air quality permit shall pay the permit fee required by [~~this Part~~] 20.11.2 NMAC.

B. Any new or existing stationary source that meets the applicability requirements of [~~this Part~~] 20.11.2 NMAC shall pay an annual emission fee based on the source's potential-to-emit. Sources wishing to reduce their potential-to-emit may do so at any time through the provisions of 20.11.41 NMAC [~~Authority to Construct~~].

C. At the time of submittal, any person filing an application for a [~~Surface Disturbance~~] fugitive dust control permit with the department pursuant to 20.11.20 NMAC, [~~Airborne Particulate Matter~~] Fugitive Dust Control, shall pay the applicable [~~filing and inspection~~] fee required by [~~this Part~~] 20.11.2 NMAC.

D. At the time of notification, any person notifying the department pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Source, of the removal of regulated asbestos containing material shall pay the applicable fee required by [~~this Part~~] 20.11.2 NMAC.

E. No application will be reviewed or permit issued unless the owner/operator provides documentary proof satisfactory to the department that either all applicable fees have been paid as required by [~~this Part~~] 20.11.2 NMAC, or the owner/operator has been granted a variance in accordance with 20.11.7 NMAC, Variance Procedures.

F. All permit fees required

to be paid at the time of application shall be paid by check or money order payable to the "city of Albuquerque, permits program (Fund 242)" and either be delivered in person to the environmental health department, finance section, 3rd floor, room 3023, Albuquerque/Bernalillo county government center (city hall), One Civic Plaza NW, Albuquerque, NM, or mailed to Attn: Finance Section, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. The finance section then shall send a receipt to the applicant. The applicant shall attach a copy of the receipt issued by the finance section to the application as proof of payment. The air quality division cannot accept direct payments.

G. No person required to pay an annual emission fee pursuant to [~~this Part~~] 20.11.2 NMAC shall be in compliance with their permit unless all applicable fees are paid as required by [~~this Part~~] 20.11.2 NMAC.

H. No fee required by [~~this Part~~] 20.11.2 NMAC shall be refunded without the written approval of the director. When determining the amount of the refund, the director may deduct a reasonable professional service fee to cover the costs of staff time involved in processing a permit or request.

[20.11.2.11 NMAC - N, 7/1/2001; A, 3/1/04]

20.11.2.12 [~~AUTHORITY TO CONSTRUCT~~] 20.11.41 NMAC, AIR QUALITY PERMIT FEES; FEE CALCULATIONS AND PROCEDURES

A. [~~General~~] Air Quality Permits for minor and area sources: sources applying for [~~a General~~] an air quality permit pursuant to 20.11.41 NMAC [~~Authority to Construct~~] shall pay the applicable fee found in Section [~~18 of this Part~~] 20.11.2.18 NMAC.

B. Case-by-case air quality review prior to the construction of a stationary source:

(1) Case-by-case air quality application review fees shall be calculated based on the proposed source's potential-to-emit fee pollutants. Federally approved state implementation plan limitations may be used to determine a source's potential-to-emit.

(2) Fugitive emissions shall be included in the source's potential-to-emit.

(3) Emissions from operations determined by the department to be insignificant activities shall not be included in the calculation.

(4) For each fee pollutant, calculate the potential-to-emit for each proposed emission unit to the nearest tenth of a ton. Total each of the fee pollutants from each emission unit and express the value in tons

per calendar year as a whole number. When rounding, if the number after the decimal point is less than 5, the whole number remains unchanged. If the number after the decimal point is 5 or greater, the whole number shall be rounded up to next whole number.

(5) The application review fee shall be determined by comparing the source's calculated potential-to-emit for the single highest fee pollutant in tons per year with the fee schedule found in Section [~~18 of this Part~~] 20.11.2.18 NMAC.

(6) In addition to the application review fees, a source proposing to construct any emission unit or units that must comply with the provisions of 20.11.60 NMAC, Permitting in Nonattainment Areas, 20.11.61 NMAC, Prevention of Significant Deterioration, 20.11.62 NMAC, Acid Rain, 20.11.63 NMAC, New Source Performance Standards for Stationary Sources, or 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, also shall pay the applicable federal program review fees listed in Section [~~18 of this Part~~] 20.11.2.18 NMAC.

(7) Example: A company proposes to build a facility with a NSPS boiler with a potential-to-emit of greater than 100 tons per year of NOx. From the fee schedule found in Section [~~18 of this Part~~] 20.11.2.18 NMAC, the company will be required to pay an initial air quality review fee of \$5,000.00 with an addition federal program review fee of \$1,000.00 for the NSPS boiler, for a total fee of \$6,000.00. The review fee shall be submitted at the time of application in accordance with the procedures found in Subsections E and F of 20.11.2.11 NMAC.

(8) Sources submitting an application for the removal of regulated asbestos containing material pursuant to 20.11.64 NMAC shall comply with the provisions of 20.11.2.14 NMAC.

C. Permit modifications:

(1) At the time of application, any source proposing to modify an existing air quality permit shall pay the applicable fee found in Section [~~18 of this Part~~] 20.11.2.18 NMAC.

(2) Any proposed modifications to an existing air quality permit that must comply with the provisions of 20.11.60 NMAC, Permitting in Non-Attainment Areas, 20.11.61 NMAC, Prevention of Significant Deterioration, 20.11.62 NMAC, Acid Rain, 20.11.63 NMAC, New Source Performance Standards for Stationary Sources, or 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, also requires the applicant [~~shall also~~] to pay the applicable federal program review fee, but only with respect to the individual emission unit subject to the

requirement.

D. Qualified small [~~business~~] businesses shall pay one-half of the calculated case-by-case air quality review fees prior to adding any federal program review or state toxic review fees. [20.11.2.12 NMAC - Rp, 20 NMAC 11.02.II.1, 7/1/2001; A, 3/1/04]

20.11.2.13 ANNUAL EMISSION FEES; FEE CALCULATIONS AND PROCEDURES

A. By June 1 of each year, the department shall send each owner/operator a letter stating the fee amount owed. The owner/operator has 45 days from receipt of the letter to contact the department to request a correction to the records or submit ~~an~~ a complete application within 45 days of receipt of the letter to modify an existing permit reducing the source's allowable emission rate.

B. Starting August 1 of each year, each owner/operator shall be sent an official invoice by the city of Albuquerque stating the annual emission fee due, which the owner/operator shall pay consistent with the directions stated in the invoice. If the department does not send the owner/operator an annual letter or invoice stating the annual emission fee that is due, the owner/operator is not authorized to continue operating the source without having first paid the applicable annual emission fee.

C. As required by 74-2-16 NMSA, all monies received pursuant to ~~this~~ Section 20.11.2.13 NMAC shall be deposited in the city of Albuquerque, permits program (Fund 242).

D. Calculating annual emission fees:

(1) For each source, the potential-to-emit for each fee pollutant shall be totaled and expressed in tons per calendar year as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to next whole number.

(2) The sum of each fee pollutant shall be multiplied by the appropriate annual emission fee listed in Section ~~18 of this Part~~ 20.11.2.18 NMAC then totaled, to determine the annual emission fee due.

(3) The source shall pay either the minimum annual emission fee or the calculated emission fee whichever is greater.

E. Sources wishing to reduce their potential-to-emit may apply for a permit or modify their existing permit consistent with the provisions of 20.11.41 NMAC [~~Authority to Construct~~]. [20.11.2.13 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04]

20.11.2.14 FILING AND INSPECTION FEES FOR THE REMOVAL OF REGULATED ASBESTOS CONTAINING MATERIAL; FEE CALCULATIONS AND PROCEDURES

A. At the time of notification, a filing and inspection fee shall be paid by the owner/operator removing regulated asbestos containing material pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, and the federal regulations incorporated therein.

B. The filing and inspection fee shall be calculated by multiplying the asbestos unit (AU) by the applicable fee in 20.11.2.18 NMAC. Equation 1 shall be used to calculate the total asbestos units (AU) and amount due:

(1) Total Due = [(SF / 160) + (LF / 260) + (CF / 35)] x AU (Equation 1)

(2) Where: SF = square feet of asbestos containing material to be removed; LF = linear feet of asbestos containing material to be removed; CF = cubic feet of asbestos containing material to be removed; and AU = asbestos unit.

(3) Example: A contractor proposes to remove 320 square feet (SF), 260 linear feet (LF) and 70 cubic feet (CF) of regulated asbestos containing material.

(4) From the example above: SF=320; LF=260; CF=70; and AU=\$21.00 (from Section ~~18 of this Part~~ 20.11.2.18 NMAC).

(5) From Equation 1: [(SF / 160) + (LF / 260) + (CF / 35)] x AU = [(320 / 160) + (260 / 260) + (70 / 35)] x \$21.00 = (2 + 1 + 2) x \$21.00 = 5 x \$21.00 = \$105.00

(6) Result: The contractor must pay \$105.00 at the time of notification.

C. All fees due pursuant to ~~this~~ Section 20.11.2.14 NMAC shall be paid in accordance with the procedures found in Subsections D, E and F of 20.11.2.11 NMAC. [20.11.2.14 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04]

20.11.2.15 [FILING AND INSPECTION] FEES FOR [SURFACE DISTURBANCE] FUGITIVE DUST CONTROL PERMITS; FEE CALCULATIONS AND PROCEDURES

A. ~~A filing and inspection fee shall be paid by each person requesting a Surface Disturbance Permit pursuant to 20.11.20 NMAC, Airborne Particulate Matter.~~

B. ~~The filing and inspection fee shall be calculated by multiplying the acreage to be disturbed, expressed as a whole number, by the applicable fee found in section 18 of this Part. When rounding,~~

~~if the number after the decimal point is less than 5, the whole number remains unchanged. If the number after the decimal point is 5 or greater, the whole number shall be rounded up to the next whole number.~~

~~**C.** All fees due pursuant to this section shall be paid in accordance with the procedures found in subsections C, E and F of 20.11.2.11 NMAC.]~~

~~**A.** Each source required by 20.11.20 NMAC to obtain a fugitive dust control permit shall pay the total fee due at the time the permit application is submitted to the department.~~

~~**B.** The filing and review fee for a non-programmatic fugitive dust control permit:~~

~~(1) for projects that are less than 2 acres is \$250.00;~~

~~(2) for projects that are at least 2 acres but less than 5 acres is \$350.00;~~

~~(3) for projects that are at least 5 acres but less than 15 acres is \$450.00;~~

~~(4) for projects that are at least 15 acres or more is \$550.00.~~

~~**C.** To calculate the non-programmatic dust control permit inspection fee, which is in addition to the above non-programmatic permit filing and review fee, multiply the acreage on which active operations or disturbance will occur by \$100.00 per acre. The number of acres must be expressed as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to the next whole number. Rounding of acres shall occur before the fees are calculated.~~

~~**D.** To calculate the programmatic fugitive dust control permit fee, multiply the acreage upon which routine maintenance or routine ongoing active operations will occur by the applicable emission control factor for a low impact source, moderate impact source, or high impact source as defined in Section 20.11.2.7 NMAC and then multiply by \$110.00. The air quality division (division) has a "source classification guidebook" that includes nonbinding examples of how to classify a no impact source, low impact source, a moderate impact source, and a high impact source. The number of acres must be expressed as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to the next whole number. Rounding of acres shall occur before the fees are calculated using the applicable emission control factor in Section 20.11.2.7 NMAC. No filing and review fee is required for a programmatic~~

permit. The total programmatic permit fee is:

(1) the fee calculated for any low impact source acres; plus

(2) the fee calculated for any moderate impact source acres; plus

(3) the fee calculated for any high impact source acres. However, the maximum combined fee shall not exceed \$10,000.00.

E. No fee shall be paid for "no impact source" acreage.

F. Example: the application for a programmatic permit includes a total of 20 acres, of which 2 acres are no impact source acres, 8 acres are low impact source acres, 5 acres are moderate impact source acres, and 5 acres are high impact source acres. To calculate the programmatic permit fee: 2 no impact source acres x 0 = 0 acres. 8 low impact source acres x 0.1 = 0.8 acre. 5 moderate impact acres x 0.5 = 2.5 acres. 5 high impact source acres x 0.9 = 4.5 acres. 0 acres, plus 0.8 acre, plus 2.5 acres, plus 4.5 acres = a total of 7.8 acres. 7.8 acres x \$110.00 per acre = a total programmatic permit fee of \$858.00.

G. The division will begin work on the programmatic permit program immediately after the adoption of 20.11.20 NMAC. Fees. All applicants shall obtain a programmatic permit by July 1, 2004, which is the date upon which all programmatic permits shall become effective during the first annual permit cycle. After June 30, 2005, the term of each programmatic permit will be from July 1 through the following June 30, and annual programmatic permit fees shall be paid for each annual term. When a programmatic permit application is submitted, the applicant may either ask the division to determine the fee to be paid by the applicant or the applicant may submit a proposed fee calculation. No later than eight working days after the division has received the programmatic permit application and the proposed fee calculation, the division shall notify the applicant in writing of the total fees due. The applicant and the department may agree in writing to extend the deadline for the department to issue the programmatic permit in order to attempt to resolve any pending issues, including any dispute over the source classification or fee calculation. The total fees due must be paid to the department before the department will issue a programmatic permit. A permit applicant may challenge the department's determination of source classification or fee calculation for a fugitive dust control permit by following the procedures established by Section 20.11.20.25 NMAC.

H. All fees due pursuant to Section 20.11.2.15 NMAC shall be paid in accordance with the procedures found in Subsections C, E, and F of Section

20.11.2.11 NMAC.

[20.11.2.15 NMAC - N, 7/1/2001; A, 3/1/04]

20.11.2.16 FEE ERRORS, CORRECTIONS AND REFUNDS

A. For permits other than fugitive dust control permits, within 30 days of receiving ~~any~~ an invoice from the city, any person who does not agree with the amount due may request a review by the director to correct any errors or challenge the basis upon which the fee was computed. If the director has not received a written request or challenge within 30 days after the payor receives the invoice, the invoice shall be final.

B. If fees are due at the time of application, the payor must pay the required fee, then request a review within 30 days of payment.

C. All written requests for review shall be sent to: Division Manager, Air Quality Division, Environmental Health Department, Air Quality Division, P.O. Box 1293, Albuquerque, NM 87103

D. The request for review must include:

(1) the name of the owner/operator, address and telephone number;

(2) the dollar amount of the alleged error; and

(3) a description of the alleged error and any other information the payor believes may support the claim.

E. Within 30 days of receiving the request for review, the director shall audit the account and, either:

(1) amend the invoice or bill and refund any money due the payor; or

(2) state the invoice or bill is correct.

F. The director may confer with the payor to obtain additional information during the audit period.

G. Within 10 working days of the director's decision concerning the review, the decision shall be sent by certified mail to address provided by the payor.

H. If a refund is due, the department shall refund any money due consistent with the policies and procedures of the city of Albuquerque.

I. The director's decision may be appealed to the board.

[20.11.2.16 NMAC - N, 7/1/2001; A, 3/1/04]

20.11.2.17 FAILURE TO PAY

A. It shall be a violation of ~~[this Part]~~ 20.11.2 NMAC to fail to pay any fee required by ~~[this Part]~~ 20.11.2 NMAC, a director's decision, or a board regulation.

B. Stating an invoice is in error shall not be a defense to ~~[this]~~ violation of Section 20.11.2.17 NMAC.

C. In addition to paying past due fees, the payor shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with the section ~~[6621(a)(2)]~~ of the Internal Revenue Code ~~[of 1986]~~ relating to computation of interest on underpayment of federal taxes.

[20.11.2.17 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04]

20.11.2.18 FEE SCHEDULE

A. Annual emission fees: Sources issued a registration or permit pursuant to 20.11.40 NMAC, ~~[Source Registration]~~ 20.11.41 NMAC, ~~[Authority To Construct, or]~~ 20.11.42 NMAC, ~~[Operating Permits]~~ 20.11.60 NMAC, or 20.11.61 NMAC shall pay a minimum annual emission fee of \$150.00 or the annual emission fee calculated consistent with Section ~~[43 of this Part]~~ 20.11.2.13 NMAC, which ever is greater. The following fee pollutant rates shall be used in calculating the annual emission fee, unless otherwise listed:

(1) non-hazardous fee pollutants: \$31.00 per ton;

(2) hazardous fee pollutants (non-major sources): \$31.00 per ton;

(3) hazardous fee pollutants (major sources): \$250.00 per ton;

(4) annual emission fees for specific source categories:

(a) auto body repair and painting: \$150.00;

~~[(i) One Spray Booth: No Charge]~~

~~[(ii) Two or more spray booths: \$150.00]~~

(b) chromium electroplating: \$150.00; and

(c) degreasers using organic solvents:

(i) non-halogenated solvents using less than 2,200 gallons of any one solvent-containing material ~~and~~ or 5,400 gallons or more of any combination of solvent-containing materials: \$150.00; and

(ii) halogenated solvents using less than 1,200 gallons ~~of~~ of any one solvent-containing material ~~and~~ or 2,900 gallons or more of any combination of solvent-containing materials: \$150.00;

(d) dry cleaners (non-major): \$150.00;

(e) emergency generators: \$150.00 or \$31.00 per ton, whichever is greater;

(f) gasoline service and fleet stations: \$250 or \$31.00 per ton, which ever is greater;

(g) stand alone natural gas or distillate fueled fired boilers less than 10 mil-

lion BTU used exclusively for residential, commercial or institutional heating and hot water: no charge;

(h) printing, publishing and packaging operations:

(i) sheetfed (nonheat-set) offset lithography using less than 7,125 gallons of clean solvent and fountain solution additives per year: \$150.00;

(ii) nonheatset web offset lithography using less than 7,125 gallons of solvent and fountain solution additive per year: \$150.00;

(iii) heatset web offset lithography using less than 50,000 pounds of ink, cleaning solvent, and fountain solution additives: \$150.00;

(iv) screen printing using less than 7,125 gallons of total solvent used including solvent-based inks, cleaning solvents, adhesives and coatings: \$150.00;

(v) flexography (water-based or UV-cured inks, coating and adhesives) using less than 200,000 pounds total of inks, coatings and adhesives: \$150.00;

(i) soil and/or water remediation operations: \$150.00; and

(j) stationary sources with de minimis emissions: no charge.

B. [General] Air quality application review fees for [New] sources [Minor Source General Permits] requiring permits pursuant to 20.11.40 NMAC or 20.11.41 NMAC:

(1) auto body repair and painting: \$500.00;

(2) dry cleaners: \$500.00;

(3) emergency generators [~~natural gas or distillate fuel~~]: \$500.00;

(4) generic coating and abrasive operations: \$500.00;

(5) other fueling facilities receiving fuel by truck or rail (non-NSPS): \$1000.00;

(6) non-NSPS boilers (greater than 10 million BTU): \$500.00;

(7) printing and packaging operations: \$500.00;

(8) retail and fleet gasoline service stations: \$500.00; and

(9) soil/water remediation systems: \$1000.00.

C. Case-by-case air quality application review fees for [New] sources requiring permits pursuant to 20.11.40 NMAC or 20.11.41 NMAC (based on a source's potential-to-emit for the single highest pollutant):

(1) proposed sources with a potential-to-emit equal to or greater than one ton per year and less than five tons per year: \$500.00;

(2) proposed sources with a potential-to-emit equal to or greater than 5 tons per year and less than 25 tons per year: \$1,000.00;

(3) proposed sources with a potential-to-emit equal to or greater than 25 tons per year and less than 50 tons per year: \$2,000.00;

(4) proposed sources with a potential-to-emit equal to or greater than 50 tons per year and less than 75 tons per year: \$3,000.00;

(5) proposed sources with a potential-to-emit equal to or greater than 75 tons per year and less than 100 tons per year: \$4,000.00; and

(6) proposed sources with a potential-to-emit equal to or greater than 100 tons per year: \$5,000.00.

D. Federal program and state toxic air pollutant application review fees in addition to the air quality application review fees:

(1) 40 CFR 60 standards: \$1,000.00;

(2) 40 CFR 61 standards: \$1,000.00;

(3) 40 CFR 63 standards:

(a) promulgated standards: \$2,000.00;

(b) case-by-case MACT review: \$10,000.00;

(4) PSD/non-attainment review: \$5,000.00;

(5) acid rain review: \$5,000.00; and

(6) state toxic air pollutant review: \$500.00.

E. Permit modifications:

(1) P2 modifications: no charge;

(2) minor/flexible permit modifications: \$1,000.00; and

(3) major modifications: \$5,000.00;

F. Portable source relocation fee: \$250.00;

G. Administrative modifications to existing permit: \$100.00;

~~**H. Surface Disturbance Permit Filing and Inspection Fee:** \$100.00 per acre]~~

[H] H. Asbestos unit (AU): \$21.00;

[I] I. Administrative fees:

(1) Professional services fee: \$75.00 per staff hour;

(2) Photocopying and other copies of public records:

(a) First 10 Pages: \$0.50 per page

(b) Additional Pages: \$1.00 per page] as provided by the New Mexico Inspection of Public Records Act and by the applicable city of Albuquerque ordinance and administrative instruction number 1-7.

(3) Regulation compilation: \$20.00; and

(4) Public records research fee: \$50.00 per staff hour. However, the charge for copying public records shall not include

a separate charge for staff time for locating and copying the documents.

J. Variance request fees: any person who petitions for a variance shall pay a fee of \$1,500.00, unless the fee is determined by the board at a hearing to impose an undue economic burden on the petitioner.

K. Board hearing fees: Any person who requests a hearing before the board to challenge the issuance of a permit, the terms of a permit or permit modification, the department's refusal to issue a permit, or the department's determination of a source classification or fee calculation for a fugitive dust control permit shall be charged a fee of \$1,000.00, unless the \$1000.00 fee for the hearing process is determined by the board at a hearing to impose an undue economic burden on the petitioner.

[20.11.2.18 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04]

**NEW MEXICO ENERGY,
MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals the following rules effective February 13, 2004: OCC 67-10 named, Commission Order No. R-3221, Case No. 3551, filed 5/2/67; and Order No. R-7940-C named, Special Rules and Regulations for the Disposal of Oil and Natural Gas Wastes in the Vulnerable Area in San Juan, McKinley, Rio Arriba and Sandoval Counties, New Mexico, filed 2/10/93.

**NEW MEXICO ENERGY,
MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 2 GENERAL OPERAT-
ING PRACTICES, WASTES ARISING
FROM EXPLORATION AND PRO-
DUCTION**

19.15.2.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division, 1220 S. St. Francis Drive, Santa Fe, New Mexico 87505, (505) 476-3440. [19.15.2.1 NMAC - N, 2/13/04]

19.15.2.2 SCOPE: All persons/entities engaged in oil and gas development and production within New Mexico.

[19.15.2.2 NMAC - N, 02/13/04]

19.15.2.3 STATUTORY AUTHORITY: Sections 70-2-1 through 70-2-38 NMSA 1978 sets forth the Oil and Gas Act which grants the oil conservation division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights, and the disposition of wastes resulting from oil and gas operations.

[19.15.2.3 NMAC - N, 02/13/04]

19.15.2.4 DURATION: Permanent.

[19.15.2.4 NMAC - N, 02/13/04]

19.15.2.5 EFFECTIVE DATE: February 13, 2004, unless a later date is cited at the end of a section.

[19.15.2.5 NMAC - N, 02/13/04]

19.15.2.6 OBJECTIVE: To regulate the drilling of oil and gas wells within the state of New Mexico to enable the oil conservation division to fulfill its statutory mandates under the Oil and Gas Act.

[19.15.2.6 NMAC - N, 02/13/04]

19.15.2.7 DEFINITIONS:

A. Alluvium shall mean detrital material that has been transported by water or other erosional forces and deposited at points along the flood plain of a watercourse. It typically is composed of sands, silts, and gravels, exhibits high porosity and permeability and generally carries fresh water.

B. Sump shall mean any impermeable single wall vessel with a capacity less than 500 gallons, where any portion of the sidewalls of the reservoir is below the surface of the ground and not visible which vessel remains predominantly empty, serves as a drain or receptacle for spilled or leaked liquids on an intermittent basis, and is not used to store, treat, dispose of, or evaporate products or wastes.

[19.15.2.7 NMAC - N, 02/13/04]

19.15.2.8 through 19.15.2.49
[RESERVED]

19.15.2.50 PITS AND BELOW-GRADE TANKS:

A. Permit required. Discharge into, or construction of, any pit or below-grade tank is prohibited absent possession of a permit issued by the division, unless otherwise herein provided or unless

the division grants an exemption pursuant to Subsection G of 19.15.2.50 NMAC. Facilities permitted by the division pursuant to Section 711 of 19.15.9 NMAC or water quality control commission regulations are exempt from Section 50 of 19.15.2 NMAC.

B. Application.

(1) Where filed; application form.

(a) Downstream facilities. An operator shall apply to the division's environmental bureau for a permit to construct or use a pit or below-grade tank at a downstream facility such as a refinery, gas plant, compressor station, brine facility, service company, or surface waste management facility that is not permitted pursuant to Section 711 of 19.15.9 NMAC or water quality control commission regulations. The operator shall use a form C-144, application to discharge into a pit or below-grade tank. The operator may submit the form separately or as an attachment to an application for a discharge permit, best management practices permit, surface waste management facility permit, or other permit.

(b) Drilling or production. An operator shall apply to the appropriate district office for a permit for use of a pit or below-grade tank in drilling, production, or operations not otherwise identified in Subparagraph (a), Paragraph (1), Subsection B of 19.15.2.50 NMAC. The operator shall apply for the permit on the application for permit to drill or on the sundry notices and reports on wells, or electronically as otherwise provided in this chapter. Approval of such form constitutes a permit for all pits and below-grade tanks annotated on the form. A separate Form C-144 is not required.

(2) General permit; individual permit. An operator may apply for a permit to use an individual pit or below-grade tank, or may apply for a general permit applicable to a class of like facilities.

(3) When filed.

(a) New pits or new below-grade tanks. After April 15, 2004, operators shall obtain a permit before constructing a pit or below-grade tank.

(b) Existing pits or new below-grade tanks. For each pit or below-grade tank in existence on April 15, 2004 that has not received an exemption after hearing as allowed by OCC Order R-3221 through R-3221D inclusive, the operator shall submit a notice not later than April 15, 2004 indicating either that use of the pit or below-grade tank will continue or that such pit or below grade tank will be closed. If use of a pit or below-grade tank is to be discontinued, discharge into the pit or use of the below-grade tank shall cease not later than June 30, 2005. If use of a pit or below-grade tank will continue, the operator shall file a permit application not later than September

30, 2004. If an operator files a timely, administratively complete application for continued use, use of the pit or below-grade tank may continue until the division acts upon the permit application.

C. Design, construction, and operational standards.

(1) In general. Pits, sumps and below-grade tanks shall be designed, constructed and operated so as to contain liquids and solids to prevent contamination of fresh water and protect public health and the environment.

(2) Special requirements for pits.

(a) Location. No pit shall be located in any watercourse, lakebed, sinkhole, or playa lake. Pits adjacent to any such watercourse or depression shall be located safely above the ordinary high-water mark of such watercourse or depression. No pit shall be located in any wetland. The division may require additional protective measures for pits located in groundwater sensitive areas or wellhead protection areas.

(b) Liners.

(i) Drilling pits, workover pits. Each drilling pit or workover pit shall contain, at a minimum, a single liner appropriate for conditions at the site. The liner shall be designed, constructed, and maintained so as to prevent the contamination of fresh water, and protect public health and the environment. Pits used to vent or flare gas during drilling or workover operations that are designed to allow liquids to drain to a separate pit do not require a liner.

(ii) Disposal or storage pits. Each disposal pit (including, but not limited to, any separator pit, tank drain pit, evaporation pit, blowdown pit used in production activities, pipeline drip pit, or production pit) and each storage pit (including any brine pit, salt water pit, fluid storage pit for an LPG system, or production pit) shall contain, at a minimum, a primary and a secondary liner appropriate to the conditions at the site. Liners shall be designed, constructed, and maintained so as to prevent the contamination of fresh water, and protect public health and the environment.

(iii) Alternative liner media. The division may approve liners that are not constructed in accordance with division guidelines only if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health, and the environment as effectively as those prescribed in division guidelines.

(c) Leak detection. A leak detection system shall be installed between the primary and secondary liner in each disposal or storage pit. The leak detection system shall be designed, installed, and operated so

as to prevent the contamination of fresh water, and protect public health and the environment. The operator shall notify the division at least twenty-four hours prior to installation of the primary liner so a division representative may inspect the leak detection system before it is covered.

(d) Drilling and workover pits. Each drilling or workover pit shall be of an adequate size to assure that a supply of fluid is available and sufficient to confine oil, natural gas, or water within its native strata. Hydrocarbon-based drilling fluids shall be contained in tanks made of steel or other division-approved material.

(e) Disposal or storage pits. No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit. Spray evaporation systems shall be operated such that all spray-borne suspended or dissolved solids remain within the perimeter of the pond's lined portion.

(f) Fencing and netting. All pits shall be fenced or enclosed to prevent access by livestock, and fences shall be maintained in good repair. Active drilling or workover pits may have a portion of the pit unfenced to facilitate operations. In issuing a permit, the division may impose additional fencing requirements for protection of wildlife in particular areas. All tanks exceeding 16 feet in diameter, exposed pits, and ponds shall be screened, netted, covered, or otherwise rendered non-hazardous to migratory birds. Drilling and workover pits are exempt from the netting requirement. Immediately after cessation of these operations such pits shall have any visible or measurable layer of oil removed from the surface. Upon written application, the division may grant an exception to screening, netting, or covering requirements upon a showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

(g) Unlined pits.

(i) General prohibition. After June 30, 2005 use of, or discharge into, any unlined pit that has not been previously permitted pursuant to Section 711 of 19.15.9 NMAC or water quality control commission regulations is prohibited, except as otherwise provided in Section 50 of 19.15.2 NMAC. After April 15, 2004, construction of unlined pits is prohibited unless otherwise provided in Section 50 of 19.15.2 NMAC.

(ii) Unlined pits exempted by previous order. An operator of an unlined pit existing on April 15, 2004 for which a previous exemption was received after hearing as allowed pursuant to Commission Orders No. R-3221 through R-3221D inclusive, shall not be required to

reapply for an exemption pursuant to Subparagraph (g), Paragraph (2), Subsection C of 19.15.2.50 NMAC provided the operator notifies the division, no later than April 15, 2004, of the existence of each unlined pit it believes is exempted by order, the location of the pit, and the nature and amount of any discharge into the pit. Such order shall constitute a permit for the purpose of Subparagraph (g), Paragraph (2), Subsection C of 19.15.2.50 NMAC. The division may terminate any such permit in accordance with Paragraph (2), Subsection C of 19.15.2.50 NMAC. Any pit constructed after April 15, 2004 shall comply with the permitting, lining and other requirements of Section 50 of 19.15.2 NMAC, notwithstanding any previous order to the contrary.

(iii) Unlined pits shall be allowed in the following areas provided that the operator has submitted, and the division has approved, an application for permit as provided in Section 50 of 19.15.2 NMAC, and provided that the pit site is not located in fresh water-bearing alluvium or in a wellhead protection area:

TOWNSHIP 19 SOUTH, RANGE 30 EAST, NMPM Sections 8 through 36;
TOWNSHIP 20 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 20 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;
TOWNSHIP 20 SOUTH, RANGE 32 EAST, NMPM Sections 4 through 9, Sections 16 through 21; and Sections 28 through 33;
TOWNSHIP 21 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;
TOWNSHIP 21 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 21 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 23 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 3, Sections 10 through 15, Sections 22 through 27, and Sections 34 through 36;
TOWNSHIP 23 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 19; and that area within San Juan, Rio Arriba, Sandoval, and McKinley Counties that is outside the valleys of the San Juan, Animas, Rio Grande, and La Plata Rivers, which are bounded by the topographic lines on either side of the rivers that are 100 vertical feet above the river channels, measured perpendicularly to the river channels, and is outside those areas that lie within 50 vertical feet, measured perpendicularly to the drainage channel, of all perennial and ephemeral creeks, canyons, washes, arroyos, and draws, and is outside the areas between the above-named rivers and the Highland Park

Ditch, Hillside Thomas Ditch, Cunningham Ditch, Farmers Ditch, Halford Independent Ditch, Citizens Ditch, or Hammond Ditch, provided that no protectable ground water is present or if present, will not be adversely affected; or any area where the discharge into the pit meets New Mexico Water Quality Control Commission ground water standards.

(3) Special requirements for below-grade tanks. All below-grade tanks constructed after April 15, 2004 shall be constructed with secondary containment and leak detection. The operator of any below-grade tank constructed prior to April 15, 2004 shall test its integrity annually and shall promptly repair or replace any below-grade tank that does not demonstrate integrity. Any such below-grade tank shall be equipped with leak detection at the time of any major repair.

(4) Sumps. Operators shall test the integrity of all sumps annually, and shall promptly repair or replace any sump that does not demonstrate integrity. Sumps that can be removed from their emplacements may be tested by visual inspection. Other sumps shall be tested by appropriate mechanical means.

D. Emergency actions.

(1) Permit not required. In an emergency an operator may construct a pit without a permit to contain fluids, solids, or wastes if an immediate danger to fresh water, public health, or the environment exists.

(2) Construction standards. A pit constructed in an emergency shall be constructed, to the extent possible given the emergency, in a manner that is consistent with the requirements of Section 50 of 19.15.2 NMAC and that prevents the contamination of fresh water, and protects public health and the environment.

(3) Notice. The operator shall notify the appropriate district office as soon as possible (if possible before construction begins) of the need for construction of such a pit.

(4) Use and duration. The pit may be used only for the duration of the emergency. If the emergency lasts more than forty-eight (48) hours, the operator must seek approval from the division for continued use of the pit. All fluids, solids or wastes must be removed within 24 hours after cessation of use unless the division extends that time period.

(5) "Emergency pits." Subsection D, of 19.15.2.50 NMAC shall not be construed to allow construction or use of so-called "emergency pits," which are pits constructed as a precautionary matter to contain a spill in the event of a release. Construction or use of any such pit shall require a permit issued pursuant to Section

50 of 19.15.2 NMAC unless the pit is described in a spill prevention, control and countermeasure (SPCC) plan required by the United States environmental protection agency, all fluids are removed from the pit within 24 hours, and the operator has filed a notice of the location of the pit with the division.

E. Drilling fluids and drill cuttings. Drilling fluids and drill cuttings shall either be recycled or be disposed of as approved by the division and in a manner to prevent the contamination of fresh water and protect public health and the environment. The operator shall describe the proposed disposal method in the application for permit to drill or the sundry notices and reports on wells.

F. Closure and restoration.

(1) Closure. Except as otherwise specified in Section 50 of 19.15.2 NMAC, a pit or below-grade tank shall be properly closed within six months after cessation of use. As a condition of a permit, the division may require the operator to file a detailed closure plan before closure may commence. The division for good cause shown may grant a six-month extension of time to accomplish closure. Upon completion of closure a closure report (form C-144), or sundry notices and reports on wells shall be submitted to the division. Where the pit's contents will likely migrate and cause ground water or surface water to exceed water quality control commission standards, the pit's contents and the liner shall be removed and disposed of in a manner approved by the division.

(2) Surface restoration. Within one year of the completion of closure of a pit, the operator shall contour the surface where the pit was located to prevent erosion and ponding of rainwater.

G. Exemptions; additional conditions.

(1) The division may attach additional conditions to any permit upon a finding that such conditions are necessary to prevent the contamination of fresh water, or to protect public health or the environment.

(2) The division may grant an exemption from any requirement if the operator demonstrates that the granting of such exemption will not endanger fresh water, public health or the environment. The division may revoke any such exemption after notice to the operator of the pit and opportunity for a hearing if the division determines that such action is necessary to prevent the contamination of fresh water, or to protect public health or the environment.

(3) Exemptions may be granted administratively without hearing provided that the operator gives notice to the surface owner of record where the pit is to be located and to such other persons as the division

may direct and (a) written waivers are obtained from all persons to whom notice is required, or (b) no objection is received by the division within 30 days of the time notice is given. If any objection is received and the director determines that the objection has technical merit or that there is significant public interest the director shall set the application for hearing. The director, however, may set any application for hearing.

[19.15.2.50 NMAC - N, 02/13/04]

HISTORY OF 19.15.2 NMAC:

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

OCC 67-10, Commission Order No. R-3221, Case No. 3551, filed 5/2/67.

OCC 67-10, Amendment No. 1, Commission Order No. R-3221-A, Case No. 3644, filed 8/31/67.

OCC 67-10, Amendment No. 2, Commission Order No. R-3221-B, Case No. 3806, filed 7/31/68.

OCC 67-10, Amendment No. 2, Commission Order No. R-3221-B-1, Case No. 3806, filed 8/20/68.

Order No. R-7940-C, Special Rules and Regulations for the Disposal of Oil and Natural Gas Wastes in the Vulnerable Area in San Juan, McKinley, Rio Arriba and Sandoval Counties, New Mexico, filed 2/10/93.

History of Repealed Material:

OCC 67-10, Commission Order No. R-3221, Case No. 3551 (filed 5/2/67), repealed 02/13/04.

Order No. R-7940-C, Special Rules and Regulations for the Disposal of Oil and Natural Gas Wastes in the Vulnerable Area in San Juan, McKinley, Rio Arriba and Sandoval Counties, New Mexico (filed 2/10/93), repealed 02/13/04.

Other History:

OCC 67-10, Commission Order No. R-3221, Case No. 3551 (filed 5/2/67) and Order No. R-7940-C, Special Rules and Regulations for the Disposal of Oil and Natural Gas Wastes in the Vulnerable Area in San Juan, McKinley, Rio Arriba and Sandoval Counties, New Mexico, (filed 2/10/93) replaced by 19.15.2 NMAC, General Operating Practices, Wastes Arising from Exploration and Production, effective 02/13/04.

NEW MEXICO DEPARTMENT OF GAME AND FISH

Explanatory paragraph: This is an amendment to Subsection D of 19.31.8.20 NMAC, DEER (2004-2005). Numbers of

licenses available have been reduced and hunt dates have been changed. Subsections C, D and E of 19.31.8.24 NMAC, ELK (2004-2005) numbers of licenses available have been reduced and hunt dates have changed. Subsection B of 19.31.8.25 NMAC, ANTELOPE (2004-2005) numbers of licenses available have been reduced. Effective date of this amendment is February 13, 2004.

19.31.8.20 DEER (2004-2005):

D. Deer entry hunts for any legal weapon, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas shall be as indicated below:

(31) Nov. 6 - 8, DER-1-131, ~~[750;]~~ **300**, FAD, 44/45.

(32) Nov. 12 - 14, DER-1-132, ~~[750;]~~ **350**, FAD, 44/45.

(43) ~~[Sept. 20 - 24;]~~ **Sept. 20 - 22**, DER-1-143, 100, FAD, 53.

(45) Nov. 6 - 7, DER-1-145, ~~[30;]~~ **15**, FAD, 54/55: Colin Neblett WMA.

(46) Nov. 10 - 14, DER-1-146, ~~[30;]~~ **15**, FAD, 54/55: Colin Neblett WMA.

(47) Nov. 17 - 23, DER-1-147, ~~[30;]~~ **15**, FAD, 54/55: Colin Neblett WMA.

[19.31.8.20 NMAC - Rp 19.31.8.20 NMAC, 4-1-2003; A, 11-26-2003; A, 2-13-2004]

19.31.8.24 ELK (2004-2005)

C. Public land elk hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

(37) ~~[Aug. 30 - Sep. 18;]~~ **Aug. 28-Sept. 18**, ELK-2-137, 50, ES, 18.

D. Public land elk hunts for muzzle-loaders, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

(45) ~~[Oct. 4 - 8;]~~ **Oct. 2-6**, ELK-3-145, 140, MB, 44/45.

E. Public land elk hunts for handicapped hunters, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

(7) Sept. 25 - 29, ELK-4-107, ~~[80;]~~ **50**, MBA, 34.

[19.31.8.24 NMAC - Rp 19.31.8.24 NMAC, 4-1-2003; A, 11-26-2003; A, 2-13-2004]

19.31.8.25 ANTELOPE (2004-2005):

B. Antelope hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open AMU's, shall be as indicated below:

(1) Aug. 21 - 29, ANT-2-101, [200,] 10, MB, 3, 5, 10. [19.31.8.25 NMAC - Rp 19.31.8.25 NMAC, 4-1-2003; A, 7-31-2003; A, 2-13-2004]

**NEW MEXICO
DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION**

This Part 7 NMAC 29.2, New Mexico Health Service Corps, filed November 26, 1996, is hereby repealed and replaced by 7.29.2 NMAC, New Mexico Health Service Corps, effective February 13, 2004.

**NEW MEXICO
DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION**

**TITLE 7 HEALTH
CHAPTER 29 PRIMARY AND
RURAL HEALTH CARE SERVICES
PART 2 NEW MEXICO
HEALTH SERVICE CORPS**

7.29.2.1 ISSUING AGENCY: New Mexico Department of Health.
[7.29.2.1 NMAC - Rp, 7 NMAC 29.2.1, 02/13/04]

7.29.2.2 SCOPE: Applies to licensed health professionals, students, and eligible communities or practice sites.
[7.29.2.2 NMAC - Rp, 7 NMAC 29.2.2, 02/13/04]

7.29.2.3 STATUTORY AUTHORITY: These regulations are promulgated pursuant to the following statutory authority:

A. the Department of Health Act, Section 9-7-6E NMSA 1978, which authorizes the secretary of the department of health to "...make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions" and

B. the Health Service Corps Act, Section 24-1D-3B(2) NMSA 1978, which authorizes the department to adopt regulations to carry out the provisions of the act.
[7.29.2.3 NMAC - Rp, 7 NMAC 29.2.3, 02/13/04]

7.29.2.4 DURATION: Permanent.

[7.29.2.4 NMAC - Rp, 7 NMAC 29.2.4, 02/13/04]

7.29.2.5 EFFECTIVE DATE: February 13, 2004, unless a later date is cited at the end of a section.

[7.29.2.5 NMAC - Rp, 7 NMAC 29.2.5, 02/13/04]

7.29.2.6 OBJECTIVE: The objective of these regulations is to set forth the duties and functions of the corps.

[7.29.2.6 NMAC - Rp, 7 NMAC 29.2.6, 02/13/04]

7.29.2.7 DEFINITIONS:

A. "Advisory committee" means a committee appointed by the secretary of the department composed of representatives of the department, university of New Mexico health sciences center training departments, health professional organizations, primary care clinics and consumers for purposes of recommending student selection of commitment stipends, prioritizing a list of eligible communities and practice sites, and advising the corps on program policy.

B. "Corps" means the New Mexico health service corps, an entity of the department.

C. "Commitment stipend" means the monies provided to health professional students and licensed health professionals in return for a promise stated in a contract to serve at an eligible community or practice site in New Mexico for at least two years.

D. "Commitment stipend contract" means a contract executed between the corps and licensed health professionals or students outlining provisions of service, potential eligible communities/practice site placements, penalties and forgiveness provisions.

E. "Dental hygienist" means an individual licensed as a registered dental hygienist (R.D.H.) in New Mexico.

F. "Dentist" means an individual licensed as a doctor of dental surgery (D.D.S.) or doctor of medical dentistry (D.M.D.) in New Mexico.

G. "Department" means the New Mexico department of health.

H. "Eligible community" means a location in New Mexico that has satisfied criteria established by the department as a medically underserved area for specific health professionals.

I. "Emergency medical technician-paramedic" means a paramedic licensed to practice in New Mexico by the department.

J. "Health professional" means a licensed physician, physician assistant, nurse practitioner, nurse midwife,

emergency medical technician-paramedic, dentist, or dental hygienist.

K. "Medically underserved area" means a community or area in New Mexico designated by the department as having a shortage of specific health professionals.

L. "Nurse-midwife" means an individual licensed by the New Mexico board of nursing and certified by the American college of nurse-midwives accreditation council.

M. "Nurse practitioner" means an individual licensed as a nurse practitioner in New Mexico.

N. "Physician" means an allopathic doctor or doctor of osteopathic medicine licensed to practice in New Mexico.

O. "Physician assistant" means a physician assistant or osteopathic physician assistant certified to practice in New Mexico.

P. "Practice site" means a public health clinic, a public or private non-profit primary care clinic that is located in a state-designated medically underserved area or that serves a high-needs population, and that uses a sliding fee scale approved by the department.

Q. "Resident" means a licensed allopathic or osteopathic physician who is engaged in a postgraduate residency program in the following specialties: family practice, internal medicine, emergency medicine, pediatrics, dentistry, or OB-GYN.

R. "Service" means at least 1,600 hours of on-site health care during each one-year period or as negotiated with the corps, and as agreed upon in a written contract.

S. "Service contract" means a contract executed between the corps and the health professional outlining the provisions of service, eligible community/practice site placement, forgiveness and penalty provisions.

T. "Student" means a potential health professional who is domiciled in New Mexico, and is enrolled in or accepted by an accredited or otherwise approved educational program or performing their preceptorship in the fields of nurse practitioner, nurse midwifery, physician assistant, or emergency medical technician-paramedic; or participating in an allopathic or osteopathic medical residency program, clinical dental school program, dental hygiene program, or dental residency program. Persons enrolled in a clinical dental school program, dental hygiene program, or dental residency program are exempted from the requirement that they be domiciled in New Mexico.

[7.29.2.7 NMAC - Rp, 7 NMAC 29.2.7,

02/13/04]

7.29.2.8 POWERS AND DUTIES OF THE CORPS: The corps shall:

A. enter into contracts to carry out provisions of the Health Service Corps Act, and may sue for enforcement of those contracts;

B. recruit and assign health professionals to eligible communities/practice sites;

C. determine a mix of health professional specialties to be recruited, with an emphasis on family practice physicians;

D. establish criteria and procedures for acceptance of applications and selection of students and licensed health professionals;

E. establish criteria and procedures for evaluating and selecting students and licensed health professionals;

F. determine and maintain a list of eligible communities/practice sites and establish a priority of those locations based on relative need; and

G. convene an advisory committee to recommend students and licensed health professionals to receive commitment stipends, recommend priorities for eligible communities/practice sites, and advise the corps on program policy.

[7.29.2.8 NMAC - Rp, 7 NMAC 29.2.8, 02/13/04]

7.29.2.9 ELIGIBILITY TO RECEIVE A COMMITMENT STIPEND:

A. To be eligible to receive a commitment stipend, students and licensed health professionals shall:

(1) provide references and undergo interviews;

(2) be enrolled in or accepted by an accredited or otherwise approved medical school residency program, school of nursing, physician assistant training program, school of dentistry, dental hygiene program, or emergency medical technician-paramedic training program, or be engaged in a residency training program or preceptorship;

(3) be a citizen of the United States or a permanent resident alien and domiciled in New Mexico, except that students enrolled in a school of dentistry, dental hygiene program, or dental residency are exempt from the requirement that they be domiciled in New Mexico;

(4) declare his or her intent to practice as a health professional at an eligible community/practice site in New Mexico for at least two years; and

(5) prior to service, be evaluated by the corps utilizing evaluation of clinical

performance and community service during training; licensing test scores; recommendations of professors, professional mentors and co-workers; and other factors as determined by the corps to ensure provision of quality health services through the corps.

B. Commitment stipends may be awarded based on the following considerations:

(1) recommendation of the advisory committee;

(2) ability, character and qualifications of the applicant;

(3) demonstrated commitment to completion of training and service in an eligible community/practice site in the state;

(4) financial need; and

(5) recommendation, support, or evidence of acceptance at an eligible community/practice site, if appropriate.

[7.29.2.9 NMAC - Rp, 7 NMAC 29.2.9, 02/13/04]

7.29.2.10 PAYMENT OF COMMITMENT STIPENDS:

A. The amount of any stipend awarded shall be dependent upon available resources and shall be paid for a maximum of two years; for paramedic students, the stipend will be paid for one year, unless the student is enrolled in a two-year associate of arts or baccalaureate degree program.

B. Upon approval by the corps of a commitment stipend, the student or licensed health professional shall enter into a commitment stipend contract.

[7.29.2.10 NMAC - Rp, 7 NMAC 29.2.9, 02/13/04]

7.29.2.11 REPAYMENT OF COMMITMENT STIPENDS: A student or licensed health professional who receives a commitment stipend shall:

A. provide a current address to the corps within sixty (60) days of completion of training and maintain a current address with the corps throughout the period of repayment;

B. apply for necessary licensure or certification to practice at the first opportunity after completion of training;

C. pay back the stipend amount by serving a period of time equal to the number of yearly stipends received, for a minimum of a two-year repayment period; and

D. be subject to repayment penalties as outlined in Subsection F of 7.29.2.12 NMAC if he or she fails to complete training, obtain licensure or certification, or complete obligation service at an eligible site.

[7.29.2.11 NMAC - Rp, 7 NMAC 29.2.9, 02/13/04]

7.29.2.12 PENALTY:

A. If the student or licensed health professional breaches his or her commitment stipend contract, he or she shall be subject to a penalty of three times the amount of the stipend received, plus 18 percent interest of the original stipend per year.

B. The penalty repayment period shall be a maximum of ten (10) years.

C. The student or licensed health professional may present to the corps a written explanation of any mitigating circumstances that prevented the full completion of training, the obtaining of licensure or certification, or the completion of a service obligation at an eligible site.

D. The corps shall evaluate the reasons for failure to complete training, obtain licensure or certification, or complete a service obligation at an eligible site and determine their validity.

E. Decisions of the corps regarding breach of commitment stipend contracts are final and binding for all purposes.

[7.29.2.12 NMAC - Rp, 7 NMAC 29.2.9, 02/13/04]

7.29.2.13 HEALTH PROFESSIONALS SERVING WITH STIPEND OBLIGATIONS:

A. Health professionals who received a commitment stipend and are serving at an eligible community/practice site shall:

(1) be covered by malpractice insurance; and

(2) be subject to evaluation by the eligible community/practice site.

B. Service contract: The health professional shall enter into a service contract with the corps that shall outline service requirements, the agreed upon eligible communities/practice sites, penalty and forgiveness provisions, and other legal provisions.

C. Compensation: If an employee or contractor of the local eligible community/practice site, compensation shall be paid by the local program, with notice given to the corps as reflected in the service contract.

[7.29.2.13 NMAC - Rp, 7 NMAC 29.2.10, 02/13/04]

7.29.2.14 DELEGATION OF ADMINISTRATION: The corps may contract with any appropriate entity to co-administer the Health Service Corps Act.

[7.29.2.14 NMAC - Rp, 7 NMAC 29.2.12, 02/13/04]

7.29.2.15 ELIGIBLE COMMU-

NITY/PRACTICE SITE SELECTION: The corps, upon recommendation of the advisory committee, shall determine priority of eligible communites/practice for placement of health professionals. [7.29.2.15 NMAC - Rp, 7 NMAC 29.2.13, 02/13/04]

7.29.2.16 ELIGIBLE COMMUNITY/PRACTICE SITE CONTRACTS: The corps may contract with eligible community/practice sites to support the recruitment, placement, or retention of eligible health professionals. [7.29.2.16 NMAC - Rp, 7 NMAC 29.2.14, 02/13/04]

7.29.2.17 ELIGIBLE COMMUNITY/PRACTICE SITE REIMBURSEMENT: The corps may require a community or practice site to pay the costs associated with the provision of corps health professionals in the community. [7.29.2.17 NMAC - Rp, 7 NMAC 29.2.15, 02/13/04]

HISTORY OF 7.29.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: DOH Regulation 95-03 (CHSD), Regulations Governing The New Mexico Health Service Corps, 3/16/95.

History of Repealed Material: 7 NMAC 29.3, New Mexico Health Service Corps (filed 11/26/96) repealed 02/13/04.

Other History: DOH Regulation 95-03 (CHSD), Regulations Governing the New Mexico Health Service Corps (filed 3/16/95), reformatted, amended, and replaced by 7 NMAC 29.3, New Mexico Health Service Corps, effective 01/01/97. 7 NMAC 29.3, New Mexico Health Service Corps (filed 11/26/96), replaced by 7.29.2 NMAC, New Mexico Health Service Corps, effective 02/13/04.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS DIVISION

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 15 FINANCIAL INSTITUTIONS - GENERAL
PART 3 HOME LOAN PROTECTION ACT- GENERAL PROVISIONS

12.15.3.1 ISSUING AGENCY: Financial Institutions Division of the

Regulation and Licensing Department. [12.15.3.1 NMAC - N, 01/23/2004]

12.15.3.2 SCOPE: All persons subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003) ("Act"). [12.15.3.2 NMAC - N, 01/23/2004]

12.15.3.3 STATUTORY AUTHORITY: Section 58-21A-13 NMSA 1978. [12.15.3.3 NMAC - N, 01/23/2004]

12.15.3.4 DURATION: Permanent. [12.15.3.4 NMAC - N, 01/23/2004]

12.15.3.5 EFFECTIVE DATE: January 23, 2004, unless a later date is cited at the end of a section. [12.15.3.5 NMAC - N, 01/23/2004]

12.15.3.6 OBJECTIVE: The objective of this rule is to clarify and interpret certain terms used in the act. [12.15.3.6 NMAC - N, 01/23/2004]

12.15.3.7 DEFINITIONS: For purposes of this rule, the definitions set forth in the act shall apply unless otherwise noted. [12.16.3.7 NMAC - N, 01/23/2004]

12.15.3.8 ANNUAL PERCENTAGE RATE: The phrase "annual percentage rate" as used in Section 58-21A-3(B) and (F) NMSA 1978, has the same meaning as the term "annual percentage rate" defined in 15 U.S.C. Section 1606(a). [12.15.3.8 NMAC - N, 01/23/2004]

12.15.3.9 PUBLISHED ANNUAL YIELD ON CONVENTIONAL MORTGAGES: The phrases "most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor," as used in Section 58-21A-3(E) NMSA 1978, and "conventional mortgage rate" as used in Section 58-21A-3(B) and (F)(1) NMSA 1978, refer to the freddie mac national mortgage homeowner commitment index published in the federal reserve "selected interest rates" (statistical release H-15). The creditor must use the most recently published weekly yield immediately preceding the 15th. [12.15.3.9 NMAC - N, 01/23/2004]

12.15.3.10 CONFORMING LOAN SIZE LIMIT: The "conforming loan size limit for a single-family dwelling

established by the federal national mortgage association," referred to in Section 58-21A-3(I) NMSA 1978, is the maximum original principal obligation set forth in, and from time to time adjusted, according to the provisions of 12 U.S.C. Section 1454(a)(2), applicable to first mortgages. "The federal national mortgage association" refers to fannie mae, the corporation initially organized pursuant to 12 USC 1716(b). [12.15.3.10 NMAC - N, 01/23/2004]

12.15.3.11 POINTS AND FEES: The categories listed under the definition of "points and fees" in Section 58-21A-3(K) NMSA 1978, are not exclusive. [12.15.3.11 NMAC - N, 01/23/2004]

12.15.3.12 OPEN-END LOAN: The term "open-end loan," used in Section 58-21A-3(K)(6) NMSA 1978, has the same meaning as the term "open-end credit," defined in 12 CFR Section 226.2(a)(20). [12.15.3.12 NMAC - N, 01/23/2004]

12.15.3.13 RATE THRESHOLD: The phrase "weekly average yield on comparable United States treasury securities on the fifteenth day of the month immediately preceding the month in which the loan is made," as used in Section 58-21A-3(L) NMSA 1978, refers to the yield on actively traded issues adjusted to constant maturities published in the federal reserve "selected interest rates" (statistical release H-15).

A. Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity or the lower yield if the loan's maturity is midway between constant maturities published in the statistical release. For example:

(1) if a mortgage loan has a term of 30 years, the rate threshold test uses the yield of securities having a constant maturity of 25 years and over;

(2) if the statistical release H-15 contains a yield for treasury securities with constant maturities of 7 years and 10 years and no maturity in between, the rate threshold test of an 8 year mortgage loan uses the yield of securities having a 7 year constant maturity, and the rate threshold test of a 9 year mortgage loan uses the yield of securities having a 10 year constant maturity;

(3) if the loan's maturity is exactly halfway between security maturities, the rate threshold test on the loan should be compared with the yield for treasury securities having the lower yield; if a mortgage loan has a term of 15 years, and the statistical release H-15 contains a yield of 5.21 percent for constant maturities of 10 years, and also contains a yield of 6.33 percent for constant maturities of 20 years, then the creditor compares the rate for a 15 year

mortgage loan with the lower yield for constant maturities of 10 years.

B. If the 15th day of the month immediately preceding the month in which the loan is made is not a business day, the creditor must use the yield as of the business day immediately preceding the 15th.

C. A loan is considered "made," within the meaning of Section 58-21A-3(L), NMSA 1978, when the consumer becomes contractually obligated on a credit transaction.

[12.15.3.13 NMAC - N, 01/23/2004]

12.15.3.14 CREDIT PROPERTY

INSURANCE: For purposes of the act, the term "credit property insurance," does not include FHA mortgage insurance, VA loan guarantees, guaranteed rural housing (GRH) loan guarantees and private mortgage insurance that would compensate the holder of a home loan directly for any shortfall between the value of the real property securing the loan and the amount owed on an obligation in default.

[12.15.3.14 NMAC - N, 01/23/2004]

12.15.3.15 TOTAL PRINCIPAL

LOAN AMOUNT: For purposes of the act, the term "total principal loan amount," as used in Section 58-21A-3(N)(1) and (2), NMSA 1978, refers to the total principal loan amount as stated in the promissory note.

[12.15.3.15 NMAC - N, 01/23/2004]

HISTORY OF 12.15.3 NMAC:
[RESERVED]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO HOISTING OPERATORS LICENSURE EXAMINING COUNCIL

HOISTING OPERATOR'S LICENSURE
EXAMINING COUNCIL MEETING

Notice is hereby given that the Hoisting Operator Licensure Examining Council will hold its regular meeting on Friday, March 26, 2004. The meeting will commence at 1:30 p.m. in the Real Estate Conference Room, 111 Lomas Blvd. NE - Suite 410 in Albuquerque, New Mexico. Council Members will consider agenda items and discuss other business that may require action. A copy of the Agenda will be available at the office of the Program Administrator prior to said meeting.

Anyone needing special accommodations is requested to notify the Program Administrator at 505-222-9109 - 111 Lomas Blvd. NW - Suite 200, Albuquerque, New Mexico of such needs at least ten days prior to the meeting.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

Volume XV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 13
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 14
Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

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